

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division

ACTIVEVIDEO NETWORKS, INC.,

Plaintiff

v.

VERIZON COMMUNICATIONS, INC.,  
et al.,

Defendants.

CIVIL ACTION NO.  
2:10cv248

TRANSCRIPT OF PROCEEDINGS

Norfolk, Virginia

July 14, 2011

DAY 3, AFTERNOON SESSION

BEFORE: THE HONORABLE RAYMOND A. JACKSON  
United States District Judge

JODY A. STEWART, Official Court Reporter

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## I N D E X

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1 AFTERNOON SESSION

2 (Hearing commenced at 2:29 p.m.)

3 (Jury in at 2:29 p.m.)

4 THE COURT: You may be seated. The record will  
5 reflect that all jurors are back in the courtroom. Counsel  
6 agree? Counsel agree that all jurors are back?

7 MR. KING: I do.

8 MR. JOHNSON: Agreed, Your Honor.

9 THE COURT: You may continue.

10 CROSS-EXAMINATION

11 BY MR. KING:

12 Q. Welcome back, Mr. Brown. Did you have a nice lunch?

13 A. Yes.

14 Q. We were talking about your work with Verizon before the  
15 lunch break, and I'd like to continue with that, but first,  
16 just want to ask a couple of general questions. ActiveVideo  
17 protects its confidential information, doesn't it?

18 A. Yes.

19 Q. And it takes steps to protect its confidential  
20 information, correct?

21 MR. JOHNSON: Objection, this is beyond the scope of  
22 direct. The witness was offered as a technical witness  
23 specifically transaction --

24 THE COURT: Sustained.

25 MR. KING: Well, Your Honor --

1 THE COURT: Sustained.

2 BY MR. KING:

3 Q. You entered a nondisclosure agreement to protect your  
4 confidential information, correct?

5 MR. JOHNSON: Same objection, Your Honor.

6 THE COURT: Well, that is overruled. I mean, I  
7 think that to the extent he testified that there was one, and  
8 you can certainly ask about that.

9 BY MR. KING:

10 Q. You may answer.

11 A. Can you repeat the question?

12 THE COURT: Wait a minute. Maybe I'm getting my  
13 witnesses confused. Only if this witness testified about the  
14 nondisclosure agreement can you question him on it. You are  
15 limited to only the things he raised on direct examination.

16 MR. KING: Okay. He did discuss sharing  
17 confidential information with Verizon, and I'm just exploring  
18 whether or not that supposed -- that testimony is, you know,  
19 consistent with their practices.

20 THE COURT: Well, I'll let you proceed with caution,  
21 but I'm going to see how far we go with any confidentiality  
22 agreement. He can testify about the confidentiality  
23 agreement. Continue.

24 MR. KING: If I may ask the first two questions I  
25 asked again, and with -- in light of the fact that it is

1 going to be very narrow questions, just the nature of the  
2 protection of their confidential information.

3 THE COURT: If he knows.

4 BY MR. KING:

5 Q. ActiveVideo does protect its confidential information,  
6 correct?

7 A. Yes.

8 Q. And ActiveVideo takes steps to protect its confidential  
9 information?

10 A. Yes.

11 Q. And in the relationship with Verizon, ActiveVideo  
12 protected its confidential information, correct?

13 A. Yes.

14 Q. And you're not familiar with any instances where  
15 ActiveVideo provided its proprietary confidential information  
16 to a company without a nondisclosure agreement?

17 MR. JOHNSON: Objection, Your Honor.

18 THE COURT: Objection sustained. You can ask him  
19 about what he did with Verizon but not any other company. We  
20 are talking about Verizon.

21 MR. KING: Okay.

22 BY MR. KING:

23 Q. The client integration with Verizon was a collaborative  
24 process?

25 A. Yes.

1 Q. And one of the reasons it was a collaborative process was  
2 because ActiveVideo didn't have the tools in its labs to test  
3 the Microsoft tools with Microsoft software?

4 A. Correct.

5 Q. So you're describing how Verizon did certain tests of  
6 their lab that you weren't privy to, but the test in those  
7 labs involved testing the equipment using the Microsoft  
8 tools, if you know?

9 MR. JOHNSON: Lack of foundation.

10 THE COURT: Overruled.

11 THE WITNESS: What was the exact question?

12 BY MR. KING:

13 Q. Let me try it again. It was one of the reasons they were  
14 doing the test in the ActiveVideo labs because ActiveVideo  
15 had the tools to test the Microsoft software?

16 A. You mean the Verizon labs?

17 Q. I'm sorry. Is one of the reasons they do the test in the  
18 Verizon labs because Verizon had the tools to test the  
19 Microsoft software?

20 A. Yeah. We didn't have that Microsoft infrastructure in  
21 our lab so we went to their lab.

22 Q. Can we look at Defendant's Exhibit 81, and the same  
23 exhibit that was introduced in the direct, and we'd like to  
24 publish it to the jury. If we could -- this is one of the  
25 documents you talked about in your direct, do you recall?

1 A. Yes.

2 Q. Okay. And if you take a look at the documents at the  
3 bottom, those three documents listed at the bottom.

4 A. Yes.

5 Q. The first one was the one you were talking about the  
6 attachment that we explored a little bit on your direct; is  
7 that right?

8 A. Yes.

9 Q. Okay. And what is the title of that document?

10 A. ICTV set-top protocol, external.

11 Q. External what does that mean? Does that mean that you  
12 shared externally with other people?

13 A. We shared with people that we were going to do a set-top  
14 report.

15 Q. So it was a document that was prepared by ICTV for  
16 external distribution?

17 A. For -- for customers we were going to, we do a client  
18 report.

19 Q. To show that companies outside of ICTV?

20 A. If they were going to develop the set-top software  
21 themselves, we would share this document.

22 Q. Well, let's take a look at Plaintiff's Exhibit 82. This  
23 is the ICTV set-top protocol, external?

24 A. Yes.

25 Q. This is the document we talked about before?



1 A. Yes.

2 Q. If you look at the bottom, you'll see across the bottom,  
3 it says, "confidential - attorneys' eyes only." You see  
4 that?

5 A. Yes.

6 Q. That is not an ActiveVideo designation, is it?

7 A. I believe that was --

8 MR. JOHNSON: Your Honor, I object to this line of  
9 questioning, it's inappropriate. He understands the  
10 discovery requirements. He can't ask this witness --

11 THE COURT: I'll sustain.

12 MR. KING: The only reason I ask, Your Honor, is I  
13 don't want the jury to be confused by the document to think  
14 that some of the printing on the document is related to --

15 THE COURT: Well, and we are not going to be  
16 confused with these questions. This witness has not  
17 testified about any of this. We leave it alone, let somebody  
18 else --

19 MR. KING: Okay. I can ask it another way, Your  
20 Honor.

21 THE COURT: Not about the "confidential - attorney's  
22 eyes only."

23 MR. KING: Okay. I can ask it another way.

24 BY MR. KING:

25 Q. This document that ICTV shared with Verizon was not

1 designated confidential by ICTV, was it?

2 THE COURT: If you know.

3 THE WITNESS: I'm not sure.

4 BY MR. KING:

5 Q. Well, ICTV -- some of the documents ICTV prepared would  
6 say confidential on them, wouldn't they?

7 A. At times, yes.

8 Q. And proprietary at other times, correct?

9 A. Yes.

10 Q. And that's typically at the bottom of the document that  
11 it would be a footer saying ICTV confidential or ICTV  
12 proprietary, correct?

13 A. Yes.

14 Q. And this document doesn't have that?

15 A. We have the copyright.

16 Q. Has a copyright. So if no one could take it and make a  
17 copy of it without your permission, but it's not  
18 confidential, correct?

19 MR. JOHNSON: Objection, lack of foundation.

20 THE COURT: Objection sustained. Go to another line  
21 of examination. This witness did not dwell on proprietary  
22 versus confidential. Go to another line of inquiry dealing  
23 with his technical experience.

24 MR. KING: Okay. I'd be happy to. If we could turn  
25 to the page -- page ending in 144 of the document.

1 THE WITNESS: Yes.

2 BY MR. KING:

3 Q. And if we could blow up that schematic there, the  
4 diagram. Okay. So this is one of the diagrams that you  
5 talked about quite a bit in your direct, correct?

6 A. Yes.

7 Q. We walked through that and you explained what was going  
8 on here and how it worked?

9 A. Yes.

10 Q. Okay. So the set-top, that box there on the top left,  
11 that is the set-top client of ICTV, correct?

12 A. That would be the software component talking to the  
13 servers, yes.

14 Q. That's the ICTV software component, correct?

15 A. Yes.

16 Q. Is talking to servers?

17 A. Yes.

18 Q. Okay. And the servers are the ICTV BS1 and the ICTV STX,  
19 correct?

20 A. Yes.

21 Q. Those are ICTV servers?

22 A. Yes.

23 Q. This is describing communications between the ICTV client  
24 and ICTV servers, correct?

25 A. Describing how we set up the interactive session, yes.

1 Q. And it's describing -- it talks about negotiating  
2 requests. You see that, the third line down?

3 A. Yes.

4 Q. You are negotiating a request from the ICTV client and  
5 the ICTV server, correct?

6 A. Um, that's the second message. The first request for the  
7 interactive session is in the first message that goes to the  
8 operations manager.

9 Q. Okay. And the negotiate accept is again a communication  
10 back from ICTV server to the ICTV client, correct?

11 A. Correct.

12 Q. Okay. That doesn't describe communications between the  
13 ICTV client and external devices from other third parties?

14 A. Correct.

15 Q. Like Verizon servers, this isn't describing  
16 communications between the ICTV server, -- the ICTV client  
17 and Verizon servers, is it?

18 A. No. It shows how to set up an interactive session.

19 Q. Between and ICTV client and the TV server?

20 A. Correct.

21 Q. You talked about the trial in Dallas, and the lab trial  
22 in Dallas in your direct, correct?

23 A. Yes.

24 Q. Did you complete the client port on the Verizon platform  
25 during that lab trial?

1 A. The plant port was working with the RF distribution with  
2 the manual channel change, Yes.

3 Q. You completed the client report?

4 A. On the Microsoft platform, yes.

5 Q. Okay. Well, I'll -- I won't do that right now. Um, your  
6 work in this project was focused on the client code, correct?

7 A. Primarily, yes.

8 Q. You didn't discuss any of Verizon's other technology  
9 during this trial?

10 A. When they showed me that other application they were  
11 working on, the photo app, that was about all they mentioned  
12 what they were working on.

13 Q. So they showed you some applications, but you didn't  
14 become familiar with the Verizon infrastructure?

15 A. No.

16 Q. Are you familiar with the FiOS architecture today?

17 A. No.

18 Q. Can we take a look at PX 399, and publish it to the jury.  
19 This is another document that plaintiff's used in their  
20 opening.

21 MR. JOHNSON: Exhibit what?

22 MR. KING: 399.

23 BY MR. KING:

24 Q. Di you recognize this document, Mr. Brown?

25 A. Yes, from that meeting we had in October 2005.

1 Q. If we could go -- first, let me ask you a quick question  
2 while we are here.

3 Now let's go to the next page, please. Okay. Can we  
4 turn that so we can see it a little better. So this is the  
5 architecture that you described in your direct, right?

6 A. Yes.

7 Q. And this is, you said, I understand, was the FiOS  
8 architecture?

9 A. Well, this was our proposed server placement for their  
10 architecture.

11 Q. Oh, so this isn't the FiOS architecture?

12 A. In 2005, I don't know if they had FiOS.

13 Q. Okay. So this is your proposal to Verizon about the  
14 architecture you'd like to build to show off your product?

15 A. To show them how to use our server placement to deliver  
16 the streams over IP to the set-top box.

17 Q. And Verizon, obviously, wasn't going to prepare a  
18 proposal -- well, let me rephrase that. ICTV prepared this  
19 proposal for Verizon?

20 A. Yeah. At their request for the meeting to set up for the  
21 IP video distribution, we put up this proposed architecture  
22 to discuss at that meeting.

23 Q. And this is the proposed architecture where you showed  
24 how they might incorporate the ICTV technology into FiOS,  
25 correct?

1 A. The interactive sessions through the HeadendWare platform  
2 on the release they were working on in 2005, which I don't  
3 believe was FiOS. I thought it was IOBI.

4 Q. Now, this is not FiOS, is it?

5 A. In 2005, I thought we were -- it mentioned they were --  
6 had a different platform. I don't remember FiOS in 2005.

7 Q. Yeah. So to the best of your knowledge, this is not the  
8 FiOS platform, is it?

9 THE COURT: I think he said he wasn't that confident  
10 about it, Mr. King.

11 THE WITNESS: I recall them as IOBI, not FiOS in  
12 2005.

13 BY MR. KING:

14 Q. Okay. And I believe I heard other witnesses say that  
15 IOBI is the same thing as FiOS? Is that your understanding?

16 A. I know what they called them in 2005.

17 Q. Okay. So this is IOBI, this isn't FiOS?

18 A. Right.

19 Q. Okay. Let's take a look at the book at the VHO section.  
20 Now, do you see that DSLAM?

21 A. The DSLAM, yes.

22 Q. DSLAM is used for DSL, correct?

23 A. Yes.

24 Q. And FiOS doesn't use DSL, does it?

25 A. I'm not sure.

1 Q. Okay. If you can -- let's look at the ATM portion. It's  
2 the -- this is IP and ATM core. You see that?

3 A. Yes.

4 Q. ATM is also used with DSL, correct?

5 A. I'm not sure.

6 Q. I just want to clarify one other thing. During your  
7 testimony earlier today you -- you were testifying that you  
8 testified about the claims of any of ActiveVideo's patents?

9 MR. JOHNSON: Objection, lack of foundation.

10 THE COURT: Objection sustained. You can ask him  
11 questions but it's up to you to recall what he testified to.

12 BY MR. KING:

13 Q. During your testimony today did you discuss the claims of  
14 ActiveVideo's patents?

15 A. We discussed the products that are a implementation of  
16 Leo's ideas.

17 Q. During your testimony today did you discuss the claims of  
18 ActiveVideo's patents?

19 THE COURT: He asked that question, and the Court's  
20 going to answer it for you. You don't recall whether that  
21 was covered on direct examination or not --

22 MR. KING: I want to clarify whether the witness's  
23 understanding was that he was discussing the claims in the  
24 patent.

25 THE COURT: Well, he's answered it. You have a



1 question, put it to him.

2 BY MR. KING:

3 Q. I'll try again. I'll do my best. During your testimony  
4 earlier today did you -- were you discussing the claims of  
5 the patent?

6 A. I don't think we talked specifically about claims. We  
7 talked about Le's invention and how we deployed that in Santa  
8 Barbara, how we tried to deploy that with Verizon.

9 Q. Okay.

10 A. So it's Leo's invention that we had been deploying all  
11 these years in 1996 and before I got there.

12 MR. KING: No further questions, Your Honor.

13 THE COURT: Any redirect?

14 MR. JOHNSON: The witness can be excused, Your  
15 Honor.

16 THE COURT: You may step down. Now you say excused,  
17 may this witness be personally excused or what?

18 MR. KING: We'd like to recall him in our case, Your  
19 Honor.

20 THE COURT: All right.

21 MR. JOHNSON: Sure.

22 THE COURT: He'll be here. Next witness.

23 MR. KING: Thank you, Your Honor.

24 (Witness excused.)

25 THE COURT: Next witness.

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1 MR. JOHNSON: Oh, I'm sorry, Your Honor. At this  
2 time we'd call Ms. Natalie Regis to the stand.

3 THE COURT: Mr. Johnson, you may recover that  
4 notebook.

5 MR. JOHNSON: Thank you. May I approach?

6 (Witness was sworn.)

7 NATALIE REGIS, called by the Plaintiff, having been  
8 first duly sworn, was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. JOHNSON:

11 Q. Would you state your name for the record, please.

12 A. Natalie Regis.

13 Q. Would you do me a favor? You are going to have to take  
14 that Mike and get a lot closer to it or we won't be able to  
15 hear you. Is that okay?

16 A. Is that better?

17 Q. I hope so. Speak up. Now, Mrs. Regis, for whom are you  
18 employed?

19 A. ActiveVideo Networks.

20 Q. And how long have you worked with ActiveVideo?

21 A. I've been with the company for about 11 years now.

22 Q. And what position are you in? What is your current  
23 position?

24 A. I work in the business development group as an account  
25 manager.

1 Q. And can you explain to the jury what you do as part of  
2 the business development group.

3 A. Right now my role is pre- and post-sales engineer, so I  
4 go in, I tell a company how our product works, why they would  
5 want to use it within their network. And then after they  
6 have it within their network, I go and make sure that  
7 they are using it to its supposed abilities.

8 Q. Can you give us your educational background.

9 A. I have a Bachelor's degree in computer science.

10 Q. And when you started at ICTV, what was your title?

11 A. I was a field service engineer.

12 Q. And tell the panel what a field service engineer does.

13 A. My role when I first started was to support  
14 installations, demos. So I go out to the customer site,  
15 install our equipment, and make sure it was working end to  
16 end.

17 Q. And was that your role in 2004?

18 A. Yes, it was.

19 Q. And what about 2005?

20 A. Yes.

21 Q. Now, did you have occasion to move into the business  
22 development group?

23 A. I did. In 2006 I moved over.

24 Q. And what were your duties in the business development  
25 group?

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1 A. I, again, support the field guys in their efforts to gain  
2 customers.

3 Q. And how would you provide that support?

4 A. I'd go in, I would work with customers on the technical  
5 side and explain to them how the system works, make sure they  
6 understood the technology.

7 Q. Now, in 2005, were you involved at all with Verizon?

8 A. I did. I supported several demos and a couple of lab  
9 installs.

10 Q. And when you say you supported a couple of demos, what do  
11 you mean?

12 A. We brought in a rack of equipment, and we would  
13 demonstrate the applications on the platform to the folks at  
14 Verizon.

15 Q. All right.

16 THE COURT: Mrs. Regis, could you slightly turn so  
17 your voice will come a little bit out this way in addition to  
18 the jury.

19 THE WITNESS: Sure.

20 THE COURT: We have get back here also.

21 THE WITNESS: Sure.

22 THE COURT: Thank you.

23 BY MR. JOHNSON:

24 Q. Where was this first demonstration installed or done,  
25 excuse me?

1 A. In New York City.

2 Q. And who was present besides yourself, if you recall?

3 A. Honestly, I don't. It was 2005. It was a long time ago.

4 Q. All right. And did you do a second demonstration?

5 A. I'm sure we did across the years but off the top of my  
6 head, I don't have a time frame for a second demo.

7 Q. Now, did you install a lab system for Verizon in New  
8 York?

9 A. We did.

10 Q. And can you explain to the jury what a lab system is.

11 A. It's similar to the Dallas system. The difference would  
12 be that we would integrate with the headend that was within  
13 the Verizon network. So it would be our equipment only in  
14 the rack and then we would do integration with the existing  
15 Verizon equipment.

16 Q. And what would that enable Verizon to do?

17 A. That would allow them to do some basic testing,  
18 benchmarking as well as application development. They'd be  
19 able to show off to their executive team any applications  
20 they built.

21 Q. Now, when you say benchmarking, what do you mean?

22 A. They would just be able to get some data points about how  
23 the system worked within their network.

24 Q. Now, did you -- did there come a time when you installed  
25 a system in Dallas?

1 A. Actually, the Dallas system we installed before New York,  
2 about two weeks before. It was the same exact set of  
3 equipment, a rack, again, just our equipment that we tied  
4 into the headend that they had in Texas.

5 Q. And were you involved in both installations?

6 A. I was.

7 Q. Okay. So what was the reason you installed the lab  
8 system at Verizon?

9 A. The first one in Dallas was mainly for set-top box  
10 integration. They were working on their Middleware and  
11 integrating it with our set-top box clients. In New York I  
12 believe they had more executive teams that they wanted to  
13 give demos to in New York.

14 Q. Now, in connection with your delivery of these lab  
15 systems, did you have installed the HeadendWare software?

16 A. Yes. The racks were prebuilt in our offices and then  
17 shipped fully ready to be integrated. So it was a pretty  
18 plug and play once we got in place.

19 Q. And can you explain for us what the HeadendWare  
20 architecture was designed to do.

21 A. Our equipment streams video down to a set-top box.

22 Q. And able to manipulate that video in any way?

23 A. There are applications that are specifically written that  
24 allow for the video to be rendered within our system, and  
25 then delivered down to the set-top box.

1 Q. And what's the quality of the video that's delivered down  
2 to the set-top box?

3 A. It looks like any other channel.

4 Q. Was -- did the delivery of this video require processing  
5 power, the set-top box?

6 A. No. Our set-top box requirements are very slim. We  
7 allow for a session to be started, make sure we get the  
8 keystrokes during that session, and then a mixture that when  
9 the session ends control is given back to the proper  
10 Middleware.

11 Q. Now, did you have a name for your, the HeadendWare --  
12 sorry, the lab system that you delivered to Verizon?

13 MR. KING: Objection, Your Honor. Calls for  
14 irrelevant testimony.

15 THE COURT: Overruled.

16 THE WITNESS: The demo systems were dubbed as  
17 Tasmanian devils. We had three of them in rotation, and we  
18 would ship them out in wooden crates, and so when they  
19 arrived on the customer's doorstep, it looked like, you know,  
20 the Tasmanian devil can swing out at any moment. It had a  
21 door on it, and then the rack was fully enclosed inside on  
22 wheels, and we just rolled that out.

23 BY MR. JOHNSON:

24 Q. Was it connected when it arrived?

25 A. It was -- the demo systems themselves were always

1 self-contained. So they would have a cable headend within  
2 them. The two lab systems that we later delivered to Verizon  
3 did not have this headend equipment. We would connect into  
4 the Verizon headend systems.

5 Q. Did your Tasmanian devil have an operations manager?

6 A. It does.

7 Q. Explain to the jury what the operations manager does.

8 A. The operations manager is essentially the brains behind  
9 the system. It would -- the set-top box would make the  
10 request to the operations manager, and it would then assign  
11 another piece of hardware from the system called the STX to  
12 that set-top box to create the session that sent the video  
13 down.

14 Q. And what is a session processor?

15 A. It is also known as an STX, but it is what creates the  
16 video stream.

17 Q. And does the set-top box talk to the STX?

18 A. Yes, directly once the operations manager has connected  
19 the two.

20 Q. Okay. And how does this connection take place?

21 A. It's an assignment. It's kind of a round robin, a lured  
22 balance from the operations manager.

23 Q. And what type of video setting is sent once a session has  
24 been created?

25 A. It's MPEG video, and it would be of whatever application



1 the session had been requesting.

2 Q. Now, once you gave the -- your lab systems to Verizon,  
3 what were they capable of doing with it, if you know?

4 A. When I would leave the customer site, I would always make  
5 sure that someone on site had access to the servers, knew how  
6 to start and stop the process, anything that, you know, in  
7 general day-to-day operations they might need to do, you  
8 know, set up the session, put together applications, all  
9 those things would be able to be done once the system was  
10 delivered.

11 Q. Was the system password protected?

12 A. It was.

13 Q. And did you give the password to somebody at Verizon?

14 A. Yes.

15 Q. Do you recall that person's name?

16 A. In Dallas it was Brian Woodworth, I believe was his name.  
17 In New York I believe I was working with Prabhakar.

18 Q. Now, once the Verizon folks had the password, what would  
19 that enable them to do?

20 THE COURT: In New York you believe working with  
21 whom?

22 THE WITNESS: Prabhakar Mani.

23 THE COURT: Prabhakar Mani?

24 MR. JOHNSON: That is his name. Prabhakar is his  
25 first and Mani is the second.

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1 THE COURT: Okay. Go on.

2 BY MR. JOHNSON:

3 Q. Okay.

4 A. Again, once you're on the system, you're able to go in  
5 and stop and start the system, add any applications, handful  
6 of settings that I would teach folks to use if they needed  
7 to.

8 Q. Okay. If you will, I'd like you to turn to Exhibit 323.

9 A. Okay.

10 Q. And I'd like you to look at the second page, there is a  
11 diagram on it, and let's publish that to the jury. Do you  
12 have the diagram in front of you?

13 A. Yes.

14 Q. And can you explain to us what this diagram shows?

15 A. This would be the -- just the generic networking diagram  
16 of the two lab installs in Dallas and New York.

17 Q. And you were telling us about some of the equipment that  
18 was installed there. If you look on the right-hand side, it  
19 says HeadendWare STX session processor. Was that the STX you  
20 just told us about?

21 A. Yes.

22 Q. Was that in the rack?

23 A. Yes.

24 Q. And the next one is a DigiMux?

25 A. Yes.

1 Q. And was that in the rack?

2 A. Yes, it was.

3 Q. Tell us what a DigiMux is.

4 A. It actually takes the IP video from the STX and converts  
5 it to QAM down to the set-top box.

6 Q. And the next block is the HeadendWare operations manager.  
7 Can you tell us, is this the operations manager you referred  
8 to earlier?

9 A. Yes, the brains of the system.

10 Q. And it was part of the rack?

11 A. Yes.

12 Q. And next is something recalled RADD?

13 A. That's a RADD, and it is a piece of Motorola equipment as  
14 is the DAC6000, the KLS and the OM1000.

15 Q. And what were they used for?

16 A. They were all part of the Verizon infrastructure to  
17 deliver television down to the set-top box.

18 Q. So the rack you delivered to New York had -- was  
19 configured with STX, the DigiMux and the operations manager  
20 along with the other items highlighted?

21 A. Again, our rack only contained the first three items.

22 The other three were existing Verizon infrastructure items.

23 Q. Now, how long had you been delivering racks to customers  
24 at the time you were responsible for installing racks for  
25 Verizon?

1 A. My first demo was about a month after I started. So  
2 since late 2000.

3 Q. All right. Prior to Verizon were there ever any  
4 instances where you delivered more than one lab system?

5 A. Not to my recollection.

6 Q. Now, did you have an expectation as to how long Verizon  
7 would keep the lab system?

8 A. I didn't personally.

9 Q. Did you have a -- did it come to your attention that  
10 Verizon wanted to relocate the lab system to another  
11 facility?

12 A. I did get an e-mail from someone I had worked with in the  
13 New York offices, and they'd asked for some power and some  
14 other logistical items about the rack because they were  
15 planning on moving it to New York. I replied with an e-mail  
16 asking if they needed help reinstalling it and bringing it  
17 back up and online, and we didn't hear back from them.

18 Q. Between the time -- when did you install these racks, the  
19 rack in New York first, the month?

20 A. April of 2005.

21 Q. Now, between April of 2005 and January of 2006, did  
22 anyone from Verizon ask you to pick up the rack?

23 A. No.

24 Q. Did you make any attempts to upgrade the rack?

25 MR. KING: Objection, Your Honor, leading the

1 witness.

2 MR. JOHNSON: Did you make any attempt?

3 THE COURT: Objection overruled.

4 THE WITNESS: We were engaged with the products  
5 group in late 2005 and early 2006, and they were asking to  
6 see a demo. We reminded them that they actually had two  
7 systems in their possession, and that if we could get in and  
8 access the system that had been -- that we had been told had  
9 been moved to New Jersey, that we would be happy to upgrade  
10 it with our latest software and our latest and greatest  
11 applications and give them a demo in their own, you know,  
12 backyard.

13 BY MR. JOHNSON:

14 Q. And if you will, let's first show you Exhibit 290. Do  
15 you have Exhibit 290 in front of you?

16 A. I do.

17 Q. Can you tell us what this refers to?

18 A. This is the e-mail between Mary Harrington from Verizon  
19 and myself where she asks me about the rack and how much  
20 electricity it will need once they move it to their Basking  
21 Ridge facility.

22 Q. And is this the e-mail you used to respond on January 5,  
23 2006?

24 A. Yes.

25 Q. Did you prepare this e-mail in your regular course of

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1 business?

2 A. Yes.

3 Q. And does it appear to be accurate, as you sit here today?

4 A. Yes. I just -- I asked if I -- you know, if she needed  
5 any help with the move, were they planning on bringing it  
6 back up themselves. Well, again, I had given them some basic  
7 directions on how to power things down and power things up,  
8 so I knew they had that capability. But, you know, I sent  
9 off our network operations group information and just made  
10 sure they knew how to contact us if they didn't -- didn't  
11 indeed need any help setting it up again.

12 MR. JOHNSON: Your Honor, at this time I move 290  
13 into evidence.

14 THE COURT: Any objection?

15 MR. KING: No objection, Your Honor.

16 THE COURT: Be admitted.

17 (The document was received in evidence and marked as  
18 Plaintiff's Exhibit No. 290.)

19 BY MR. JOHNSON:

20 Q. Now, would you go to Plaintiff's 291. Oh, I'm sorry. I  
21 meant to say 344.

22 THE COURT: Mr. Johnson, do you have a notebook of  
23 all the exhibits you are planning to use, another notebook?

24 MR. JOHNSON: Yes, we do, Your Honor.

25 THE COURT: I think it would assist the Court to

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1 stop pulling these books again.

2 MR. JOHNSON: All right.

3 THE COURT: Okay.

4 BY MR. JOHNSON:

5 Q. Okay. Tell us what Exhibit 344 is, Mrs. Regis.

6 A. 344 is an e-mail chain between myself, Maitreyi from  
7 Verizon and Bob Beyer from ActiveVideo, as well as Brent  
8 Simon was added at the end from Verizon.

9 Q. And what were you attempting to communicate with this  
10 series of e-mails?

11 A. We'd been given Maitreyi name by Brent Simon who wanted  
12 to see this demo, and I reached out to her to see if I could  
13 get into the Basking Ridge facility and actually update the  
14 equipment. She did not reply to me so about a week later,  
15 Bob Beyer, who is the account rep for Verizon at the time,  
16 reached out to her, as well, reiterating that we would really  
17 like to get in and take a look at the system and upgrade it  
18 and threw out a couple of suggested dates as we were quite  
19 busy in 2006.

20 And we got a reply saying that they were unsure that  
21 they would be able to support us on that date for an upgrade.

22 Q. Did you prepare this e-mail string in the regular course  
23 of business?

24 A. I did.

25 Q. And as you sit here today, does it appear to be accurate?

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1 A. Yes.

2 MR. JOHNSON: Your Honor, I would move PX 344 into  
3 evidence.

4 MR. KING: No objection, Your Honor.

5 THE COURT: Be admitted.

6 (The document was received in evidence and marked as  
7 Plaintiff's Exhibit No. 344.)

8 BY MR. JOHNSON:

9 Q. If you will, let's publish 344. And let's go to the  
10 e-mail at the bottom of the first page, that says from  
11 Ms. Regis, addressed to Mr. Beyer. It states, "I was given  
12 your name and e-mail address by my colleague, Bob Beyer."

13 Between the installation in '05 and June of '06, did  
14 anyone -- had you been able to communicate with folks at  
15 Verizon about what was happening with this particular lab  
16 system?

17 A. Again, we were very busy in that time frame. I didn't  
18 personally reach out to look for the system.

19 Q. All right. So when you reached out, you indicated, as I  
20 read this, that you wanted to upgrade the software?

21 A. Yes.

22 Q. And why did you want to do that?

23 A. We had a new release, and it had a bunch of new hip  
24 pieces of software that we wanted to make sure we were  
25 showing our system to the best of our ability.



1 Q. And what was that new release called?

2 A. I believe in 2006 it would have been ActiveVideo.

3 Q. It was called ActiveVideo? Was it ActiveVideo Network?

4 A. No. That was just the ActiveVideo platform.

5 Q. Okay. And what was new and different about this  
6 platform, if you know?

7 A. We had addressed some scaleability questions. We had  
8 addressed a lot of just improvements to the overall system.

9 Q. Now, you got a response from Mr. Krishnaswamy on June  
10 13th. Let's highlight that, part of the e-mail stream, at  
11 the top. Did Mr. Krishnaswamy ever get back to you to let  
12 you know when you could come in and do this upgrade?

13 A. Maitreyi is a woman and I don't recall ever getting a  
14 response. We never did get to upgrade that system.

15 Q. So between 2005 and when it was returned, it was never  
16 upgraded?

17 A. No.

18 Q. Now, you said there was another rack in Texas?

19 A. Yes.

20 Q. Now, was that still in Texas at the time?

21 A. Yes.

22 Q. And was that rack upgraded?

23 A. No.

24 Q. Now, did you ask to have the rack in New Jersey returned?

25 A. We did not.

1 Q. Did -- if you will, let's take a look at Exhibit 185.

2 MR. KING: Objection, Your Honor. This exhibit was  
3 the subject of discussions in chambers and --

4 THE COURT: Let me look at 185, first.

5 All right. I'm not sure I can rule on your  
6 objection yet because I don't know exactly what he is getting  
7 ready to ask, Mr. King. I understand what the subject he is  
8 but I'm not sure exactly what he's getting ready to ask.

9 MR. KING: Okay. If you'd like, I'd like to have a  
10 side bar to discuss it.

11 MR. JOHNSON: Can I lay a foundation first?

12 THE COURT: Let me find out before you lay the  
13 foundation. It is mid-afternoon. I'm sure everybody could  
14 stand a little stretch in place. You can stand up, ladies  
15 and gentlemen.

16 (Side-bar conference.)

17 THE COURT: You all mentioned the changes you have.  
18 I don't want them before the jury. I don't want them on the  
19 record.

20 Okay. Now, what's the objection, Mr. King? Step  
21 right here.

22 MR. KING: Judge, there are two objections. The  
23 first objection is the occupancy. This is a document that  
24 was a picture taken by an ActiveVideo employee who's  
25 currently an employee, and he only produced for litigation a

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1 grainy black and white copy of it. And now two days ago, he  
2 produced a color picture with a declaration from the  
3 currently employee saying I took the picture, I can verify  
4 this.

5 Now, if that guy took the picture and is an employee  
6 and wants to verify, he'd like to see this document, he  
7 should be here on the stand. We should have had a chance to  
8 depose him before. It shouldn't be sprung on us at the last  
9 minute. That is my first objection.

10 THE COURT: Let me see what the picture is.

11 MR. KING: The second objection is 103, the document  
12 is extremely inflammatory. We tore this apart, and we  
13 dropped it. There is no evidence, and I think Mr. Johnson  
14 will have to confirm, we've got no evidence that this is the  
15 condition of the rack when it was shipped across country.

16 THE COURT: Okay. Let me see. Where are you going  
17 with this?

18 MR. JOHNSON: If I might.

19 THE COURT: Yes, sir. I want to find out what you  
20 are accusing me of dropping. I don't know where he is going.  
21 Where are you going with this?

22 MR. JOHNSON: The rack was returned unexpectedly.  
23 The picture was taken and provided to Mrs. Regis on the day  
24 it happened, and she will testify this was the e-mail she  
25 received showing this rack. And then she will testify that

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1 the rack --

2 THE COURT: Do me a favor. Hold it. Don't address  
3 remarks to each other. Always to me. Even if you disagree  
4 with what is being said, talk to me, all right.

5 MR. JOHNSON: Now, the document is clearly relevant.  
6 It clearly comes in as a business record. It was  
7 communicated to my client.

8 THE COURT: So what else did she say about the rack?

9 MR. JOHNSON: She can only say --

10 THE COURT: She will say the rack was returned?

11 MR. JOHNSON: The rack was turned, and this was the  
12 condition it was in at the time.

13 THE COURT: Okay. So.

14 MR. JOHNSON: She's not going to testify about  
15 what --

16 THE COURT: Anybody drop it?

17 MR. JOHNSON: No, she can't testify to that.

18 THE COURT: Okay. Fine. Look here. I'm going to  
19 let him proceed. It's not worth quibbling about. Objection  
20 is overruled, and that is all we are going to be getting on  
21 this document.

22 MR. JOHNSON: That is fine. The only reason that we  
23 had a colored picture because it is cleaner.

24 THE COURT: Well, I'm not concerned about that.  
25 That black and white is clear to me. So I don't know about

1 the color. Just move on.

2 Now, let me tell you something, gentlemen. I am  
3 reaching the end of my tolerance with you all scrapping with  
4 each other in this case. Now, you are going to have to cut  
5 it out. You've got two and a half weeks to go, and you just  
6 have to cut it out, simple as that.

7 Now, move on. Let's go.

8 (End of side-bar conference.)

9 BY MR. JOHNSON:

10 Q. Before we move on, can we put up 344. Do you have that  
11 in front of you?

12 A. Almost. Yes.

13 Q. Now, you see it bears the date is June 13, 2006?

14 A. Yes.

15 Q. And in this e-mail from Mr. Beyer, were you provided a  
16 copy?

17 A. Yes, I was on the e-mail chain.

18 Q. Okay. So did you participate in the decision -- strike  
19 that. Looking at this e-mail, there is a reference to  
20 additional requests to have the lab system upgraded?

21 A. Yes.

22 Q. And was that responded to?

23 A. I know that Brent -- it is actually Simon -- had  
24 requested the demo and had given us Maitreyi's name in order  
25 to upgrade the system. I believe there were several other

1 e-mails back and forth between Bob and Brent in order to try  
2 and resolve access to the system to upgrade it.

3 Q. Now, if you will, let's go to Exhibit 185. Do you have  
4 that document in front of you?

5 A. Yes.

6 Q. And did you receive this document from a Craig Kugler on  
7 or about November 14, 2006?

8 A. Yes.

9 Q. And who is Mr. Kugler?

10 A. He was the SPV of customer service and operations.

11 Q. And explain to the jury what the SPV of customer service  
12 does.

13 A. The -- I'm sorry, the senior vice-president was  
14 overseeing the operations group as well as the customer  
15 service group. So as we had customers, he would make sure  
16 that he was following the customer service protocols.

17 Q. And was there anything that accompanied this particular  
18 exhibit, this particular e-mail?

19 A. Yes. There are two pictures.

20 Q. And did you review the e-mail on or about November 14,  
21 2006 in the regular course of your business?

22 A. Yes.

23 Q. And is this e-mail accurate to the best of your  
24 knowledge?

25 A. Yes.

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1 Q. And the pictures that are shown, are those pictures the  
2 same that you saw on or about November 16, 2006?

3 A. Yes.

4 Q. And are they accurate to the best of your knowledge?

5 A. Yes.

6 MR. JOHNSON: At this time, Your Honor, I would move  
7 into evidence Exhibit 185.

8 THE COURT: The document will be admitted. The  
9 Court's already had a bench conference on the document. Any  
10 objection is noted.

11 MR. KING: Thank you.

12 (The document was received in evidence and marked as  
13 Plaintiff's Exhibit No. 185.)

14 BY MR. JOHNSON:

15 Q. All right. Let's start with the first page. And blow it  
16 up. Did you receive this information from Mr. Kugler? It  
17 says, "By the way, this is what we got back from Verizon.  
18 Nice packing job"?

19 A. Yes.

20 Q. And let's show them the first picture. Was that the  
21 picture of the rack that was returned?

22 A. Yes.

23 Q. Let's show the second picture. Who is the gentleman  
24 standing in the picture, if you know?

25 A. That is Bill Gerlack. He was shipping and receiving at

1 the time.

2 Q. And now before we leave, this crate, was this the  
3 Tasmanian devil crates you were telling us about?

4 A. Yes.

5 Q. And was this a condition that the crate was in when you  
6 left it?

7 A. The crate, yes; the rack, no. The rack is a bit in  
8 disarray compared to when I left it in New York.

9 Q. All right. Let's move on. Talk about the Texas rack.  
10 Did you ever get that one back?

11 A. We did eventually get that one back.

12 Q. And did you have to make a request to try to get it back?

13 A. We did. We had started working with yet another group in  
14 Massachusetts, and, again, they were asking for equipment  
15 within their lab, and we reminded them that we were without  
16 one of our systems that was still in Dallas and we'd asked  
17 for some help to retrieve it.

18 Q. And what year was this?

19 A. This would have been 2007.

20 Q. And were you able to find out where the rack was?

21 A. I was. I had asked for some names and numbers of the  
22 folks that we had worked with previously, and as soon as I  
23 sent an e-mail out, I got a reply and we got the rack back  
24 shortly thereafter.

25 Q. Let's take a look at Exhibit 186. Do you have that



1 document in front of you?

2 A. I do.

3 Q. And did you receive this document in the regular course  
4 of your business on or about December 5, 2007?

5 A. Yes.

6 Q. And --

7 THE COURT: Mr. Johnson, she just testified that she  
8 waited to get the information code, she waited to get the  
9 rack back. What is the necessity for wanting these?

10 MR. JOHNSON: Well, the necessity for wanting these  
11 is because it shows the additional effort she had to  
12 undertake.

13 THE COURT: She testified to that, just testified to  
14 that. She just testified.

15 MR. JOHNSON: It took additional efforts but the  
16 efforts I would like to establish were more than just normal.

17 THE COURT: Well, the Court's ruled she just  
18 testified to it. Next question. The Court is not admitting  
19 186. That is all. So we can go right on to what happened  
20 next.

21 BY MR. JOHNSON:

22 Q. Did Mr. -- do you know who Mr. Paschetto is?

23 A. Jim Paschetto was the engineer I was working with out of  
24 Massachusetts.

25 Q. And was he the person you contacted about getting the

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1 rack back?

2 A. Yes.

3 Q. And did he identify who had the racks?

4 A. He identified a handful of folks that I had worked with  
5 previously and refreshed my inbox with their names, e-mails  
6 and phone numbers.

7 Q. And who were they?

8 A. It was Prabhakar Mani, who we talked about, Enrique  
9 Velasco, terrible with names, Kiran and Shafiq.

10 Q. Now, how did he communicate those names to you?

11 A. He sent me an e-mail.

12 Q. And was it from the e-mail account of Verizon?

13 A. No. He actually sent me an e-mail from his personal  
14 account.

15 Q. Had you ever received such an e-mail from Mr. Paschetto  
16 from his personal account concerning business information?

17 A. No, I had not.

18 MR. KING: Objection, Your Honor.

19 MR. JOHNSON: What's the objection?

20 MR. KING: Relevance.

21 THE COURT: The Court is going to overrule the  
22 objection because I know we are going to move on. You've got  
23 the e-mail with the names of people she can contact. Let's  
24 move on to what happened next.

25 BY MR. JOHNSON:

1 Q. Now, did they return the rack after you got this e-mail  
2 from Mr. Paschetto?

3 A. Yes. I sent an e-mail to those four folks I just  
4 mentioned and Enrique replied, and we received the rack  
5 shortly thereafter.

6 Q. Now, what date was this?

7 A. It was sometime in December of 2007.

8 Q. Now, this is the same rack that you delivered in 2005?

9 A. In April 2005, yes.

10 Q. Now, in your work as the technical consultant, had you  
11 had any other situations where a client had kept your product  
12 or kept your racks for almost three years?

13 A. Not to my recollection.

14 Q. Now, if you will, are you familiar with the AV platform?

15 A. The ActiveVideo platform?

16 Q. Yes.

17 A. Yes.

18 Q. And what does it enable one to do?

19 A. It is similar to the HeadendWare platform. It allows for  
20 applications to be built and delivered from the headend down  
21 to the set-top box as a video stream.

22 Q. And if you will, go to DX, that is Defendant's 0858. Do  
23 you have that in front of you?

24 A. Yes.

25 Q. And tell us what it is.

1 A. This is some stream captures of an application that  
2 Cablevision wrote called Optimum Autos for the platform they  
3 have deployed in New York.

4 Q. And what does this screen capture shows?

5 A. It shows an application that essentially allows for  
6 classifieds for you to take a look at different cars, new and  
7 used, compare those, allows you to do all this using your  
8 remote on the television.

9 MR. JOHNSON: Now, at this time we would move DX 858  
10 into evidence.

11 MR. KING: Objection, Your Honor, hearsay.

12 MR. JOHNSON: It's the defendant's exhibit.

13 MR. KING: I made my objection.

14 THE COURT: First of all, the notebook you gave does  
15 not have an 858 in it. So you're going to have to pull it.

16 Okay. Let me see if I can pull Defendant's 858,  
17 take a look at it.

18 MR. KING: Your Honor, I withdraw my objection.

19 MR. JOHNSON: Your Honor, I believe it is the first  
20 document in your binder.

21 THE COURT: Oh, okay. I was looking chronological.  
22 These are blanks.

23 MR. KING: I made the same mistake.

24 MR. JOHNSON: It is easy to get confused here.

25 THE COURT: All right. Objection withdrawn, let's

1 move on here.

2 MR. JOHNSON: All right. Now, this screen shot, can  
3 you publish it first?

4 THE COURT: You may.

5 BY MR. JOHNSON:

6 Q. I see in the middle there's a picture of a truck. It  
7 says 2011 Ford F-150. Is that a picture, is that a moving  
8 picture or a still.

9 A. I believe it is a movie playing with it or a video  
10 playing within the window.

11 Q. Okay. And above it you see certain tabs, my auto, video,  
12 find a card, et cetera?

13 A. Yes.

14 Q. And what do those tabs do, if you know?

15 A. Again, you can navigate to them with remotes and choose  
16 the different options right on your television.

17 Q. Is this what is known as an app?

18 A. Yes. This is an application.

19 Q. Now, I'd like you to turn to PX 59. And can you tell us  
20 what this?

21 A. This is another application. This is HSN interactive  
22 shopping application.

23 Q. And when you say HSN interactive shopping, what do you  
24 mean?

25 A. HSN, the Home Shopping Network on television, has a --

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1 built an application for the platform that allows you to  
2 actually buy with your remote on the television.

3 Q. And is this a slide presentation that was prepared in the  
4 ordinary course of business?

5 A. Yes.

6 Q. And are you familiar with it?

7 A. Yes.

8 Q. And does it appear to be accurate, to the best of your  
9 knowledge?

10 A. Yes.

11 Q. And was it prepared in or about 2008?

12 A. Sounds about right.

13 MR. JOHNSON: We would move Exhibit 059 into  
14 evidence, Your Honor.

15 MR. KING: Objection, Your Honor. It's hearsay and  
16 obviously not proper business record. It's specific event,  
17 specific presentations, doesn't fall into the category of  
18 business record. To the extent he is offering it for the  
19 truth of the matter asserted, we object.

20 THE COURT: Well, several foundation questions you  
21 have to satisfy to get it in, and I think he satisfied them.  
22 When did she prepare them? Let the Court find out.

23 Do you know where this document was prepared, Mrs.  
24 Regis?

25 THE WITNESS: Where it was prepared?

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1 THE COURT: Yeah.

2 THE WITNESS: Our marketing department, I believe,  
3 prepared this.

4 THE COURT: And was it maintained by your marketing  
5 department?

6 THE WITNESS: I believe so.

7 THE COURT: Objection overruled. Be admitted.

8 (The document was received in evidence and marked as  
9 Plaintiff's Exhibit No. 59.)

10 BY MR. JOHNSON:

11 Q. May we publish Page 2. Let's go to the next page,  
12 please. All right, Mrs. Regis, can you explain to the jury  
13 what's shown here?

14 A. This is the home page of the HSN application. Again, it  
15 allows you to look at the featured product as well as what's  
16 currently on television, and you can go deep into their  
17 catalog, as well, under their different categories. Pretty  
18 similar to what their website offers today.

19 Q. And did you -- did ActiveVideo develop a tool to build  
20 applications such as this?

21 A. We do. We have what we call are aids to look at or  
22 ActiveVideo editor to look at. It allows you to essentially  
23 drag and drop where you would like the videos and the buttons  
24 and all of the images to be --

25 Q. And did you give this AV tool kit to Verizon?

1 A. I did. I shared it with Jim Paschetto and the group of  
2 people he was working with out of Massachusetts.

3 Q. And did -- when did you give this tool kit to  
4 Mr. Paschetto?

5 A. Sometime in 2007, I would guess.

6 Q. If you will, let's look at PX 26. Can you tell us what  
7 PX 26 is?

8 A. It's an e-mail exchange between Jim Paschetto and I. He  
9 had been working on building out some applications, one of  
10 which was a mosaic application, and he wanted some video  
11 clips in order to populate his application. So we had  
12 rendered some in what we call stitchable MPEG and delivered  
13 to him for use in an application.

14 Q. And this is July 27th, 2007?

15 A. Yes.

16 Q. And this was an e-mail from him to you?

17 A. It was actually from me to him first and then he replied.

18 Q. And is this document accurate, to the best of your  
19 knowledge?

20 A. Yes.

21 Q. And was it prepared in the ordinary course of business?

22 A. Yes.

23 MR. JOHNSON: Your Honor, I would move into evidence  
24 PX 26.

25 THE COURT: Any objection?



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1 MR. KING: No objection, Your Honor.

2 THE COURT: Exhibit 26 is admitted.

3 MR. JOHNSON: Like to publish it to the jury, Your  
4 Honor.

5 (The document was received in evidence and marked as  
6 Plaintiff's Exhibit No. 26.)

7 BY MR. JOHNSON:

8 Q. Okay. In July had you been requested -- did  
9 Mr. Paschetto make any requests regarding use of this AV  
10 tool?

11 A. Again, he'd started using it and started building  
12 applications, and he'd asked us for some video clips to use  
13 to populate some of his applications.

14 Q. Now, did he offer any explanation why in July of 2007 he  
15 wanted to work with your AVE tool?

16 MR. KING: Objection, Your Honor, calls for hearsay.

17 THE COURT: Sustained. Sustained.

18 BY MR. JOHNSON:

19 Q. Okay. Did you have an understanding why he wanted to use  
20 the tool?

21 A. Um --

22 MR. KING: Objection, Your Honor. Same objection.

23 THE COURT: Well, I'll permit her to -- she can  
24 testify knowledgeable why you want it without telling us what  
25 he said. And the Court will permit the documents to come in,

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1 but we get into -- I'm not going to explain this. This was  
2 hearsay. That's why I sustained it. Now, she can testify to  
3 the reason he wanted it, her understanding of what they were  
4 going to do with it, permit that, but that's overruled.

5 MR. JOHNSON: That is what I asked.

6 BY MR. JOHNSON:

7 Q. Did you have an understanding?

8 A. Yes. He and his team were looking to build applications  
9 and work together with us to bring some of these new  
10 applications to their subscribers.

11 Q. If you will go to PX 33. Do you have that in front of  
12 you?

13 A. I do now.

14 Q. And I see there's an e-mail dated August 6, 2007 from you  
15 to NOC. Who is NOC?

16 A. It was our network operations center.

17 Q. And did you prepare this e-mail on or about the date it  
18 bears?

19 A. Yes.

20 Q. And is it accurate, to your knowledge?

21 A. Yes.

22 Q. And was it done in the regular course of business?

23 A. Yes.

24 Q. And the top there's an e-mail from Mr. Chuck Stobing?

25 A. Yes.

1 Q. And who is he?

2 A. He was our network manager at the time.

3 MR. JOHNSON: Your Honor, at this time I would move  
4 in PX 33.

5 THE COURT: Any objection?

6 MR. KING: No objection, Your Honor.

7 THE COURT: Be admitted.

8 (The document was received in evidence and marked as  
9 Plaintiff's Exhibit No. 33.)

10 BY MR. JOHNSON:

11 Q. This document says that, "The development team at Verizon  
12 is starting to develop some applications using the AVE tool  
13 set. They would like to demonstrate to their executive team  
14 what they are building sometime later this month. They were  
15 curious if they could ship us their application and have us  
16 run it on a system in house that they can connect to using a  
17 sling box. Is this something we can -- we plan to support?  
18 I know it has been suggested in other meetings as an option,  
19 but I'm not sure where the project stands today."

20 Who communicated with you Verizon's request to use  
21 your AVE tool to demonstrate as to their executives?

22 A. That was Jim Paschetto.

23 Q. Now, as of this date, was there a mutual nondisclosure  
24 agreement in place with Verizon?

25 A. I don't believe so.

1 Q. And as of this date had you made any request from Verizon  
2 to enter into such an agreement?

3 A. I believe we had started down the path of trying to  
4 figure out how we might work together.

5 Q. Approximately how many times, if you can recall, prior to  
6 August 2007 had you requested that a mutual nondisclosure  
7 agreement be entered into?

8 A. I honestly don't know off the top of my head.

9 Q. More than five?

10 A. Probably.

11 THE COURT: Don't speculate. She says she doesn't  
12 know. You can't speculate.

13 BY MR. JOHNSON:

14 Q. Now, did you deliver the AVE tool without the NDA?

15 A. I did.

16 Q. And when did you deliver it, if you recall?

17 A. Sometime before that July e-mail between Jim and I.

18 Q. All right. And Verizon took possession of it, to your  
19 knowledge?

20 A. Yes.

21 Q. Did you see any applications that they developed using  
22 your tool?

23 A. I don't believe we ever got that far.

24 Q. All right. Did there -- did you have any meetings with  
25 them discussing how this AVE tool worked?

1 A. We did. As the previous e-mail stated, I set up a weekly  
2 call with them to make sure that I was able to answer any  
3 questions, make sure that they were using the, you know, tool  
4 kit as, you know, that had any issue. We had questions back  
5 and forth between Jim and I about certain applications and  
6 how things might work within an application.

7 Q. So these weekly meetings, how long did they last? These  
8 weekly phone calls, how long did they last?

9 A. Probably about a year.

10 Q. A year? And who participated from your side?

11 A. It was mostly Jim and I just doing our weekly sync up.  
12 He brought some folks from his side in at times that were  
13 also developing applications and/or talk more on the  
14 technical level of architecture, and things like that, and  
15 then I, in turn, would bring in the right people from my  
16 side, whether it be from the engineering group or the  
17 application building group to help out, as well.

18 Q. And did you discuss the technical details of how you  
19 build these applications?

20 A. We did.

21 Q. Did you -- was there any discussion about the  
22 architecture?

23 A. Yes. We definitely talked about how specifically HSN  
24 would fit within their application offering and in their  
25 infrastructure.

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1 Q. If you will, please look at PX 47. Do you have the  
2 document in front of you?

3 A. I do.

4 Q. And tell us what it is.

5 A. It looks like a meeting notice with an attachment of a --  
6 I'm guessing a diagram. It just says architecture - Verizon.  
7 It is truncated.

8 Q. And did you send it out on March 3, 2008?

9 A. It looked like -- yes, it looks like that.

10 Q. Does it look like or is it March?

11 A. Yes, March 28 -- or March 3rd, 2008, yes.

12 Q. Okay. And did you send this e-mail out in the regular  
13 course of business?

14 A. Yes.

15 Q. And is it accurate, to the best of your knowledge?

16 A. Yes.

17 Q. And did -- there is an attachment at PX 48. I'd like you  
18 to look at that and see if that was the attachment that  
19 accompanied the e-mail?

20 A. Yes.

21 Q. And the attachment, this was the attachment accompanied  
22 your e-mail?

23 A. I believe so. It looks like the same name.

24 Q. I'm sorry?

25 A. It looks like the same name from the attachment here to

1 the exhibit here.

2 Q. And what does this attachment depict?

3 A. This is an infrastructure drawing for us, Verizon and  
4 HSN.

5 Q. Who prepared it?

6 A. Jim Gerlack.

7 Q. And who is Jim Gerlack?

8 A. He was network architect for ActiveVideo.

9 Q. And what was the purpose for preparing this document, if  
10 you know?

11 A. Jim and I had just started to -- Jim Paschetto from  
12 Verizon and I just decided -- started discussing what the  
13 infrastructure might look like. So in our weekly calls we  
14 were delving deeper and deeper into the architecture.

15 Q. Was Mr. Paschetto involved in the preparation of this  
16 document?

17 A. I don't believe so.

18 MR. JOHNSON: At this time I'd like to move in, Your  
19 Honor, Exhibits 47 and 48.

20 THE COURT: Any objection to 47 and 48?

21 MR. GUTMAN: No objection, Your Honor.

22 THE COURT: They will be admitted.

23 And, ladies and gentlemen, we are going to take our  
24 break 15 minutes early today, and then we are going to come  
25 back and continue to the end of the day. We will continue

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1 when we come back.

2 (Jury out at 3:43 p.m.)

3 THE COURT: Recess for 15 minutes.

4 (Recess from 3:43 p.m. to 4:01 p.m.)

5 (Jury in at 4:01 p.m.)

6 THE COURT: Let the order reflect all the jurors  
7 have returned to the courtroom. Agreed?

8 MR. KING: Yes.

9 THE COURT: All right. You may continue.

10 BY MR. JOHNSON:

11 Q. Now, the diagram that we have on the screen, 48,  
12 highlight the bottom left-hand corner. You see the ICTV  
13 confidential mark?

14 A. Yes.

15 Q. Was that mark on the diagram when you sent it to  
16 Mr. Paschetto?

17 A. Yes.

18 Q. And why was that?

19 A. Standard practice to put that on diagrams that we sent  
20 out.

21 Q. Now, the diagram that we are looking at, what does it  
22 disclose, if you know?

23 A. Again, it's showing what HSN would look like if their  
24 application was deployed within the Verizon architecture on  
25 the ActiveVideo platform.



1 Q. So if we -- are you familiar with the architecture?

2 A. Generally speaking.

3 Q. Okay. So if we look in the middle we see ICTV AVDN with  
4 HSN in the VHO. See that?

5 A. Yes.

6 Q. So there is a lot of acronyms. What does AVDN mean?

7 A. ActiveVideo distribution network.

8 Q. And what is W -- the HSN?

9 A. HSN, again, is Home Shopping Network.

10 Q. And below that we see several boxes. Can you explain  
11 what those are?

12 A. Those represent servers within the AVDN or the  
13 ActiveVideo platform.

14 Q. And to your left, if we move to the left and blow it up.  
15 What is this?

16 A. These would be the components we tie into in the Verizon  
17 network.

18 Q. And it says SHE IF to IP over SONET, 10G. Do you  
19 understand what that means?

20 A. Generally, it is their super headend, which is what SHE  
21 is. IF, I'm not sure. I'm guessing it's --

22 THE COURT: Don't guess, ma'am. If you are  
23 generally familiar, but don't guess if you don't know what to  
24 make of it.

25 THE WITNESS: It is generally describing how the

1 communication was going to happen between the super headend  
2 and the equipment.

3 BY MR. JOHNSON:

4 Q. All right. Go down to the bottom, please. And what is  
5 that?

6 A. This again is -- just part of the Verizon infrastructure  
7 and the communication pieces between our equipment and  
8 theirs.

9 Q. Now, when you delivered this architectural drawing to  
10 Mr. Paschetto -- before we proceed, it says,  
11 "Verizon-ICTV-HSN-overview details (2/11/08)." You see that?

12 A. Yes.

13 Q. And does that accurately describe the overview as far as  
14 you were concerned?

15 A. Yes.

16 Q. Now, had you worked with Mr. Paschetto on this particular  
17 drawing before it was sent?

18 A. I can't recall. I know that he had his own drawing, and  
19 this was our interpretation.

20 Q. Now, before we go any further, I'd like you to take a  
21 look at Exhibit 342. You got 342 in front of you?

22 A. Yes.

23 Q. Can tell us what it is.

24 A. It's an e-mail exchange between my boss, Michael Taylor,  
25 and Bill Garrett from Verizon and myself and Jim Paschetto

1 are on it, as well.

2 Q. And your e-mail exchange, is that the second page?

3 A. Yes.

4 Q. And what were you trying to accomplish in or about  
5 September of 2007?

6 A. I was working with the Verizon attorneys to put a mutual  
7 nondisclosure agreement in place.

8 Q. And does this e-mail reflect the state of affairs as of  
9 September 8th, 2007 with regard to that mutual nondisclosure  
10 agreement?

11 A. Yes.

12 Q. And is it accurate?

13 A. Yes.

14 MR. JOHNSON: Move 342 into evidence, Your Honor.

15 THE COURT: Any objection?

16 MR. KING: No objection, Your Honor.

17 THE COURT: 342 will be admitted.

18 (The document was received in evidence and marked as  
19 Plaintiff's Exhibit No. 342.)

20 BY MR. JOHNSON:

21 Q. Now, had the original mNDA expired, if you know?

22 A. I don't.

23 Q. Did you have an understanding why you were being asked to  
24 give a second mutual nondisclosure agreement in place?

25 A. But, yes. The original had expired. These were a new

1 group of folks we were working with.

2 MR. KING: Objection, Your Honor.

3 THE COURT: Sustained. Don't assume.

4 THE WITNESS: This was a new group of folks we were  
5 working with out of Massachusetts and so we were just -- I  
6 was just -- I was in a new role, and my boss asked me to  
7 follow up with the folks at Verizon to put this in place.

8 BY MR. JOHNSON:

9 Q. Now, if you will, look at PX 341. Can you tell us what  
10 PX 341 is?

11 A. It's an e-mail exchange, again, between my boss, Michael  
12 Taylor, and Bill Garrett of Verizon regarding putting a lab  
13 agreement in place.

14 Q. And did that include another mutual nondisclosure  
15 agreement?

16 A. That was the request.

17 Q. Okay. And does this e-mail exchange reflect your  
18 understanding of the situation at that time?

19 A. Yes.

20 Q. And was it done in the regular course of business?

21 A. Yes.

22 MR. JOHNSON: At this time we'd move 341 into  
23 evidence, Your Honor.

24 THE COURT: Any objection?

25 MR. KING: No objection, Your Honor.

1 THE COURT: Be admitted.

2 (The document was received in evidence and marked as  
3 Plaintiff's Exhibit No. 341.)

4 BY MR. JOHNSON:

5 Q. Now, the bottom of the first page, the first e-mail on  
6 the first page, let's publish it, please.

7 And this is a communication from a Mr. Garrett at  
8 Verizon?

9 A. Yes.

10 Q. Who was he?

11 A. Bill Garrett was their director of innovation out of the  
12 Massachusetts office.

13 Q. And you expressed concern to him about the fact that you  
14 had a lab system that hadn't been returned?

15 A. We did.

16 Q. And this bottom paragraph says, "Your concern about your  
17 equipment is independent of the need for an NDA (which  
18 wouldn't protect your equipment), generally speaking VTO  
19 doesn't sign NDAs." Do you see that?

20 A. I do.

21 Q. And was that your understanding of the position they were  
22 taking as of that date?

23 A. It is.

24 Q. Now, did you ultimately sign an NDA?

25 A. We weren't able to get a blanket mutual nondisclosure

1 agreement in place, but we were able to carve out a subset  
2 NDA for our PC client.

3 Q. When you say PC client, tell us what you mean.

4 A. It was a client that would be run on your personal  
5 computer and would allow you to stream to that computer from  
6 our infrastructure back in San Jose.

7 Q. If you will go to PX 97. Have you seen Exhibit 97  
8 before?

9 A. Yes.

10 Q. And did you receive it on or about November 28th, 2007?

11 A. Yes.

12 Q. And did you review it at that time?

13 A. I did.

14 MR. JOHNSON: We would like to introduce into  
15 evidence PX 97.

16 THE COURT: Any objection?

17 MR. KING: No objection, Your Honor.

18 THE COURT: Be admitted.

19 (The document was received in evidence and marked as  
20 Plaintiff's Exhibit No. 97.)

21 BY MR. JOHNSON:

22 Q. Now, let's put up the nondisclosure agreement. Let's  
23 blow up the top portion.

24 THE COURT: Ladies and gentlemen, again, I don't  
25 know that you can read this on the screen. You will have an

1 opportunity to examine it in hand.

2 MR. JOHNSON: Scan the top portion, just the top  
3 portion, please.

4 BY MR. JOHNSON:

5 Q. Bring it over a bit more to the right. I need the  
6 sentence, the whole sentence so we can get it. Okay. It  
7 says that, "Matter of mutual interest described as follows:  
8 ICTV IP-client application will be shared with Verizon and  
9 runs on a PC enabling the PC to connect to and access ICTV's  
10 servers via the Internet. This application allows the PC to  
11 act as a cable set-top box that can play IP-video streams  
12 created on ICTV's servers and will be shown internally within  
13 Verizon for ICTV video stream demonstration purposes only."  
14 Have I read that correctly?

15 A. The first sentence is ICTV PC client, not IP client, but,  
16 yes.

17 Q. All right. Tell the jury what that means.

18 A. Again, we had developed a PC client that you could run on  
19 your personal computer that would allow you to access  
20 applications similar to the way a set-top box would access  
21 them from our servers in San Jose.

22 Q. Now, does this mutual nondisclosure agreement cover your  
23 ActiveVideo editor you told us about earlier?

24 A. I was told that this could not cover anything that we had  
25 previously given them already. So, no, it does not.

1 Q. By who?

2 A. Jim Paschetto.

3 Q. And did you send him the PC?

4 A. I don't believe we actually ever sent them the PC client.  
5 We ended up going down another path in trying a different  
6 demo strategy with them.

7 Q. Now, if you will, please look at the exhibit, -- well, go  
8 back to 48. When you sent 48 to Mr. Paschetto, what, if  
9 anything, happened next?

10 A. We continued to have our weekly meetings and continued to  
11 put in a place a deployment checklist, all the items that we  
12 would need to do in order to actually deploy HSN within the  
13 Verizon network across our architecture.

14 Q. Now, were you asked to remove the ICTV confidential  
15 legend?

16 A. I don't recall about this specific diagram, but on other  
17 items, yes.

18 Q. Please look at PX 300. Do you have Exhibit 300 in front  
19 of you?

20 A. I do.

21 Q. And did you receive this document in or about March 4,  
22 2008?

23 A. Yes.

24 Q. Was it from Mr. Paschetto?

25 A. It was.



1 Q. And did you receive it in the regular course of business?

2 A. I did.

3 Q. And is this document accurate, as far as you know?

4 A. Yes.

5 MR. JOHNSON: I'd like to move 300 in evidence, Your  
6 Honor.

7 THE COURT: Any objection?

8 MR. KING: No objection, Your Honor.

9 THE COURT: Be admitted.

10 (The document was received in evidence and marked as  
11 Plaintiff's Exhibit No. 300.)

12 BY MR. JOHNSON:

13 Q. Publish it for the jury. Now, this is March 4, 2008.

14 This is after the previous NDA was signed, correct?

15 A. Yes.

16 Q. Now, when he wrote, "Until we have a mNDA in place, we  
17 really can't accept documents marked "ICTV confidential" or  
18 "ICTV proprietary." Could you send us an architecture  
19 diagram without that notice?" Do you see that?

20 A. Yes.

21 Q. What reaction did you have when you received it?

22 A. I was surprised and went back to my architecture and made  
23 sure that we could resend the diagram without confidentiality  
24 on it.

25 Q. Did you resend the diagram?

1 A. I did.

2 Q. Let's take a look at Exhibit 301. Do you have Exhibit  
3 301 in front of you?

4 A. I do.

5 Q. And this bears the date of March 31, 2008; is that  
6 correct?

7 A. It does.

8 Q. And did you send this e-mail on or about the date it  
9 bears?

10 A. Yes.

11 Q. And was that in the regular course of business?

12 A. Yes.

13 Q. As you look at this document, is it accurate to the best  
14 of your knowledge?

15 A. Yes.

16 Q. And there are pictures accompanying this document?

17 A. There are.

18 Q. Did they accompany the document on or about the time you  
19 sent it?

20 A. They did.

21 Q. And are they accurate to the best of your knowledge?

22 A. Yes.

23 MR. JOHNSON: Your Honor, at this time I move into  
24 Exhibit 301.

25 MR. KING: No objection, Your Honor.

1 THE COURT: Be admitted.

2 (The document was received in evidence and marked as  
3 Plaintiff's Exhibit No. 301.)

4 BY MR. JOHNSON:

5 Q. Now, why did you write this e-mail that is published?

6 A. Again, we were having our weekly meetings, and as they  
7 advanced, we retouched the architecture added in, filled in  
8 some blanks, added in information that was necessary to keep  
9 the project moving forward.

10 Q. And you sent this to Mr. Paschetto?

11 A. I sent this to the meeting attendees, yes, including  
12 Mr. Paschetto.

13 Q. Now, you had been meeting at this time an entire year?

14 A. Almost, yes.

15 Q. Now, during the process of those meetings were you  
16 teaching the Verizon personnel how to use your AVE?

17 A. The tool kit, yes. So we were having these weekly  
18 discussions that included both the tool kit revisions and  
19 updates as well as architecture and infrastructure  
20 information.

21 Q. And did that include the Home Shopping Network app you  
22 showed us?

23 A. We did share that with them in several demos.

24 Q. Okay. You said you shared it with them in several demos.  
25 Tell us what you mean.

1 A. We would bring along our own PC client and be able to  
2 demonstrate the application to them.

3 Q. Okay. Now, did they share with you any of the  
4 applications they were building?

5 A. Not specifically. They just showed us snippets of things  
6 they were having trouble with. They would send us pieces of  
7 code that they couldn't get to work and asked us for feedback  
8 on how to make them work better.

9 Q. Now, when you say they were -- they showed you snippets  
10 of code, explain to us what you mean.

11 A. Just a little piece of the code, not the entire  
12 application.

13 Q. They ever ask you how to correct the problem they were  
14 having?

15 A. Yes.

16 Q. Would they tell you why they were using this, what they  
17 planned to use this for?

18 A. Again, Jim and I were working toward getting the  
19 infrastructure in place. HSN happened to be the driver  
20 application, but they were building a handful of other  
21 applications in the background so that once the  
22 infrastructure was in place, they could have a plethora of  
23 applications to put out to the -- their subscribers.

24 Q. Now, in the e-mail 301, in the communications there is  
25 the drawings. So if you look at the drawings, and let me

1 know if the legend, confidential legend has been removed in  
2 the lower left-hand corner?

3 A. It has.

4 Q. Now, in looking at the Verizon-ICTV-HSN-overview, one  
5 more time, the box in the middle, boxes in the middle, what  
6 do they depict?

7 A. They were the ActiveVideo platform.

8 Q. And did it -- and to the left, what did that depict?

9 A. That looks to be the Verizon infrastructure that we would  
10 be tying into.

11 Q. All right. And then to the right, what did that depict?

12 A. That would have been the content servers where HSN would  
13 host their assets and all of their video clips that they  
14 would then send down to the AV platform to be displayed on  
15 the television.

16 Q. Now, this Verizon-ICTV-HSN-overview, did Mr. Paschetto  
17 participate in the drafting of this in any way?

18 A. Yes.

19 Q. This came from ICTV?

20 A. This came from ICTV, yes.

21 Q. Now, did there come a point when you became concerned  
22 about Verizon's real interest in your product?

23 A. Not me personally. My boss had advised me.

24 MR. KING: Objection.

25 THE COURT: Objection sustained.

1 BY MR. JOHNSON:

2 Q. At some point did you stop working with Verizon?

3 A. We did.

4 Q. All right. When was that?

5 A. Late 2008.

6 MR. JOHNSON: Nothing further.

7 THE COURT: Cross-examination.

8 CROSS-EXAMINATION

9 BY MR. KING:

10 Q. Hello, Mrs. Regis. How are you?

11 A. I'm okay.

12 Q. I'm Patrick King, represent Verizon. You were the field  
13 service manager in 2005?

14 A. Yes, I believe that was my title.

15 Q. You didn't have any direct responsibility for the Verizon  
16 relationship during this period, did you?

17 A. No.

18 Q. Did you help set up demonstrations for Verizon in 2005,  
19 correct?

20 A. I did.

21 Q. And in your role as the field service manager in 2005,  
22 you gave demonstrations for other companies, as well,  
23 correct?

24 A. I did.

25 Q. You were giving demonstrations at least once a month?

1 A. At least.

2 Q. And you started doing these demonstrations for Verizon  
3 what year?

4 A. In 2005.

5 Q. So in 2005 you started giving demonstrations for  
6 potential customers about once a month?

7 A. No. In 2005 I started giving demonstrations to Verizon.  
8 In 2001 I started with the company. I began giving  
9 demonstrations broadly to other companies, as well.

10 Q. Okay. So I'm talking about generally about your  
11 demonstrations. You began giving demonstrations on behalf of  
12 ICTV in about 2001?

13 A. 2000, end of 2000, yes.

14 Q. And how often would you give demonstrations to other  
15 potential customers beginning in 2001?

16 A. About once a month.

17 Q. And about how many customers actually saw the ICTV demo  
18 that you did for Verizon or something similar to it?

19 A. I'd like to think all of our potential customers had seen  
20 it at one point or another, whether it be at a trade show or,  
21 you know, individual demonstrations.

22 Q. And the demonstration you did for Verizon in 2005 was  
23 essentially the same demonstration you did at trade shows, as  
24 well?

25 A. I believe it was, yes.

1 Q. Public demonstrations?

2 A. I believe so, yes.

3 Q. You knew what test programs were installed in the racks  
4 that you provided to Verizon?

5 A. I can't recall off the top of my head. It was six years  
6 ago. We've gone through a lot of applications.

7 Q. You mentioned in your direct that there was an issue of  
8 the scalability of the ICTV system; is that correct?

9 A. That was expressed to us, yes.

10 Q. And did Verizon complain to you about the scalability of  
11 your HeadendWare system?

12 MR. JOHNSON: Objection, hearsay.

13 THE COURT: Objection overruled.

14 THE WITNESS: No one complained directly to me.

15 BY MR. KING:

16 Q. Okay. But it was your understanding that Verizon had  
17 complained to ActiveVideo about the scalability of the  
18 ActiveVideo system?

19 A. Not specifically.

20 Q. Had you heard any other customers complain about the  
21 scalability of the system?

22 A. Yes.

23 THE COURT: The Court is going to sustain that, but  
24 other customers. We are talking about Verizon. The Court  
25 permitted that. But other customers, no.



1 BY MR. KING:

2 Q. You modified your product at some point in about 2006,  
3 correct?

4 A. Yes.

5 Q. And the modification was part to address the scalability  
6 issues, correct?

7 A. It was, indeed.

8 Q. And the system you gave to Verizon in 2005 was the system  
9 that -- was the system you had in place before you addressed  
10 the scalability issues, correct?

11 A. Yes.

12 Q. And you never gave Verizon a system after the  
13 scalability issues were fixed?

14 A. Correct.

15 THE COURT: Counsel, before you ask the next  
16 question, perhaps you can explain the scalability we are  
17 talking about, Mrs. Regis. What is scalability?

18 THE WITNESS: Oh, scalability just means the amount  
19 of consecutive sessions per server.

20 BY MR. KING:

21 Q. I'm sorry. Can you clarify that a little bit, little  
22 more detail about what the scalability issue was?

23 A. Just the number of sessions per blade. Depends on how  
24 many rack -- servers, racks to scale, to a larger deployment.

25 Q. So the product was not well suited for very large

1 deployments?

2 MR. JOHNSON: Objection, lack of foundation.

3 THE COURT: Overruled.

4 THE WITNESS: It was perfectly suited for it. It  
5 would work. It just meant that you needed more hardware in  
6 place.

7 BY MR. KING:

8 Q. If we could put up Plaintiff's Exhibit 48. Oh, I'm  
9 sorry. Let me have a couple quick questions for you about  
10 this document. You mentioned that this was a document -- can  
11 we have the whole document here for a second before you do  
12 that. You mentioned that this document was the result of  
13 extensive conversation with folks at Verizon?

14 A. Yes.

15 Q. Okay. I think I heard you say that the diagram was  
16 created by ActiveVideo, ICTV, correct?

17 A. Yes.

18 Q. And it was created from some drawings provided by  
19 Mr. Paschetto at Verizon?

20 A. I believe there was some, yeah, diagrams that we had  
21 shared back and forth.

22 Q. Okay. So you guys were exchanging information and  
23 working together to design this system?

24 A. Yes.

25 Q. Well, it wasn't really a system, was it? This was never

1 built?

2 MR. JOHNSON: Objection, lack of foundation. She  
3 can't testify to what Verizon did or didn't do about building  
4 the system.

5 MR. KING: She can --

6 THE COURT: You can rephrase the question, and I'll  
7 permit her to answer.

8 BY MR. KING:

9 Q. Well, let me see if I can rephrase the question for you.  
10 If you look at the bottom, and if you could zoom in on the  
11 stuff in the corner. That says "proposed," right?

12 A. Correct.

13 Q. That was the proposed architecture?

14 A. Yes.

15 Q. And it was the architecture that was designed  
16 collectively by Verizon and ICTV?

17 A. Yes.

18 Q. Okay. So let's turn to Plaintiff's Exhibit 301. So this  
19 was a document you discussed on direct, correct?

20 A. Yes.

21 Q. And if we turn to the attachment to this document, this  
22 is a later version of the same diagram we were just looking  
23 at?

24 A. Yes.

25 Q. I believe you testified that the confidential sticker was

1 removed from the corner?

2 A. Yes.

3 Q. And it was removed at Verizon's request because they  
4 didn't want to have to say "ICTV confidential"?

5 A. Correct.

6 Q. And this is a diagram that was prepared by ICTV and  
7 Verizon collectively, correct?

8 A. Correct.

9 Q. And they didn't want to have in their files stuff that  
10 you were claiming to be ICTV confidential, that -- well, let  
11 me rephrase the question.

12 I'll drop that. May I offer this?

13 THE COURT: What exhibit number is that?

14 MR. KING: It is exhibit number, Defense Exhibit  
15 566, Your Honor. Mrs. Regis, can you take a moment to look  
16 at this e-mail or this document. Let me know if you  
17 recognize it.

18 THE WITNESS: I do.

19 BY MR. KING:

20 Q. You do? And what is this e-mail?

21 A. It's an e-mail exchange between myself and some internal  
22 folks regarding the Verizon network and infrastructure.

23 Q. Okay. So the internal folks you mention are Jim Gerlack,  
24 correct?

25 A. Yes.

1 Q. And Jeremy Edmonds?

2 A. Yes.

3 Q. And those are both ActiveVideo employees?

4 A. They are.

5 Q. And they were your colleagues at ActiveVideo, correct?

6 A. Yes.

7 Q. And you were all employees at ActiveVideo in 2008 --

8 A. Yes.

9 Q. -- the date of this e-mail? And what is this e-mail  
10 generally regarding?

11 A. Um, we had had a call with Verizon and had gathered some  
12 information, and I wanted to work with Jim Gerlack, who was  
13 our network architect, and try to get a drawing put together.

14 Q. So this e-mail was prepared in the normal scope of your  
15 work at ActiveVideo?

16 A. Yes.

17 Q. And it was prepared in the normal scope of Mr. Gerlack's  
18 work and Mr. Edmond's work, as well?

19 A. Yes.

20 Q. And do you have any reason to doubt this isn't an  
21 accurate copy of the document?

22 A. Excuse me.

23 Q. Do you have any reason to doubt this isn't an accurate  
24 copy of the document?

25 A. No.

1 MR. KING: I'd like to move this document into  
2 evidence, Your Honor.

3 THE COURT: Any objection?

4 MR. JOHNSON: No.

5 THE COURT: Shall be admitted.

6 (The document was received in evidence and marked as  
7 Defendant's Exhibit No. 566.)

8 BY MR. KING:

9 Q. If you take a look at the e-mail. It begins from Jim  
10 Gerlack. He begins, "Verizon may very well be one of our  
11 biggest opportunities, as well as our biggest challenge." Do  
12 you see that?

13 A. I do.

14 Q. And it says, "Because we have a Telco service  
15 mentality" -- I'm sorry. Let me rephrase that. "Because  
16 they have a Telco service mentality, before we can go to  
17 production" -- "because they have a Telco service mentality,  
18 before we can go to production, we would first need to comply  
19 with high-availability standards." Do you see that?

20 A. I do.

21 Q. It might be easier to follow if we can publish it for the  
22 jury, please.

23 A. All right.

24 Q. So do you see where I was reading from the first three  
25 lines there at the top? And what do you understand that to

1 mean.

2 A. That was Jim's opinion that he felt compelled to share  
3 with me.

4 Q. And did you -- what did you understand Jim to be saying  
5 there?

6 A. Just that we would need to look at what Verizon needed as  
7 far as high availability and look to be able to comply with  
8 that.

9 Q. And if you see the sentence about the fifth line down, it  
10 says, "I do not believe we will be fully ready for their lab  
11 environment with respect to high-availability, until sometime  
12 in 2009 (best case)." You see that?

13 A. Uh-huh.

14 Q. What did you understand Mr. Gerlack to be saying there?

15 A. Again, it was his opinion that perhaps the platform  
16 wasn't going to be ready.

17 Q. So who is Mr. Gerlack again?

18 A. He was our network architect.

19 Q. He was one of the more senior people on your design team?

20 A. No. He was just a network architect.

21 Q. Okay. It goes on, if you'll see the line about halfway  
22 through that paragraph, it begins on the line, getting in.

23 Do you see that?

24 A. Yes.

25 Q. It says, "Getting in their lab too early with incomplete

1 expectations could be very embarrassing." Do you see that?

2 A. Uh-huh.

3 Q. That was in 2008, correct?

4 A. Yes.

5 Q. We also on your direct, we went through, we looked at a  
6 number of documents involved in Home Shopping Network?

7 A. Uh-huh.

8 Q. That engagement, that project with Verizon, when did it  
9 begin?

10 A. I can't say for certain.

11 Q. Do you have a sense of when it resolved, when it wrapped  
12 up?

13 A. No. In 2008 probably when we stopped working with  
14 Verizon.

15 Q. 2008 was about two years after FiOS went to market,  
16 correct?

17 A. Again, I don't know.

18 Q. The Home Shopping Network application that ActiveVideo  
19 prepared was developed jointly with the Home Shopping  
20 Network, right?

21 A. With HSN, yes.

22 Q. And it was an application designed jointly by ActiveVideo  
23 and Home Shopping Network to run ActiveVideo's network,  
24 correct?

25 A. HSN, yes.



1 Q. And HSN also developed the applications to use on other  
2 platforms, correct?

3 MR. JOHNSON: Objection, lack of foundation.

4 THE COURT: What are you saying, Mr. Johnson?

5 MR. JOHNSON: I said objection, lack of foundation  
6 as to other platforms.

7 THE COURT: Sustained.

8 BY MR. KING:

9 Q. Did HSN have any other applications that was already  
10 provided to customers aside from the one that it had used  
11 ActiveVideo platform to develop?

12 A. I had seen an application at Cablevision that had been  
13 developed by Gold Pocket.

14 Q. So the answer is yes?

15 A. Yes.

16 Q. Were you aware of any applications that Home Shopping  
17 Network was developing with Insequence?

18 A. Not firsthand.

19 Q. Ericsson?

20 A. That would be the same as Gold Pockets, so, yes.

21 Q. Now, do you recall in your deposition saying that you  
22 were also aware of home shopping, HSN developing an  
23 application with Insequence?

24 A. I don't.

25 Q. Do you know how similar or difference the Ericsson

1 platform was with the platform that Home Shopping Network  
2 designed with ActiveVideo?

3 MR. JOHNSON: Objection, lack of foundation. It is  
4 also compound.

5 THE COURT: Wait a minute, now.

6 MR. JOHNSON: And it is also beyond the scope.

7 THE COURT: Well, the Court overrules. It is not a  
8 compound question. I overrule it. There was some inquiry  
9 from the plaintiff about the Home Shopping Network capability  
10 in one of these exhibits, close enough within the scope, so  
11 it's overruled.

12 THE WITNESS: I'm sorry. Could you repeat the  
13 question?

14 BY MR. KING:

15 Q. Sure. Do you know how similar or different the Ericsson  
16 platform, the Home Shopping Network, Ericsson application was  
17 for the ActiveVideo, HSN application?

18 A. I don't.

19 Q. Did you ever see screen shots of the Ericsson  
20 application?

21 A. I don't believe I have.

22 Q. Do you know in your dealings with HSN that they -- did  
23 they ever tell you that they wanted the application they were  
24 developing with you? Let me rephrase that. Do you know if  
25 in 2007 was HSN already providing an application to Verizon?

1 A. I don't.

2 Q. Sitting here today, do you know if HSN has ever jointly  
3 developed an application with Verizon?

4 A. I don't.

5 Q. In the 2007 project you were doing with ActiveVideo --  
6 with Verizon, was Verizon careful about sharing confidential  
7 information near you?

8 A. I would say yes, I guess. I don't recall ever having  
9 trouble.

10 Q. And did you ever have any -- well, let me rephrase that.  
11 Throughout the time you were working with Verizon, your  
12 relationship with people at Verizon was professional,  
13 correct?

14 A. Yes.

15 Q. And cordial?

16 A. Yes.

17 Q. And you've maintained a good relationship with Verizon  
18 throughout the entire period that we've been discussing here,  
19 correct?

20 A. Yes.

21 Q. And the employees from Verizon always cooperated with you  
22 and treated you with respect?

23 A. Yes.

24 MR. KING: No further questions, Your Honor.

25 THE COURT: Any redirect?

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1 MR. JOHNSON: None, Your Honor.

2 THE COURT: Next witness.

3 (Witness excused.)

4 MR. JOHNSON: Your Honor, we would call Mr. Michael  
5 Taylor.

6 THE COURT: Mr. Taylor.

7 (Witness was sworn.)

8 THE COURT: All right. You may go forward.

9 MICHAEL TAYLOR, called by the Plaintiff, having  
10 been first duly sworn, was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. JOHNSON:

13 Q. Mr. Taylor, by whom are you employed?

14 A. ActiveVideo.

15 Q. And what's your current status?

16 A. I am senior vice-president of business development.

17 Q. And how long have you held that position?

18 A. Since 2006.

19 Q. Would you tell the jury your educational background?

20 A. I graduated college from Georgia State University in  
21 Atlanta with a degree in economics and southern literature.

22 Q. All right. And tell us briefly your employment history.

23 A. Before ActiveVideo -- should I start at the closest to  
24 and go back or the other way?

25 Q. Let's start after college and go forward.

1 A. Sure. After college I went to management consulting.  
2 After college I went into management consulting for a company  
3 called Telic, T-e-l-i-c. After Telic I left and formed my  
4 first start-up, which is called Geotel. From there I began  
5 another management consulting job with San Francisco  
6 Consulting Group. I then did another startup called Instant  
7 Video Technologies which was -- then moved into guest serve  
8 systems, which was a hotel Video On Demand company.

9 From there I consulted to a company called Sky  
10 Connect, helped them become acquired by In Cube. I joined In  
11 Cube as head of business development. Left In Cube in 2000  
12 and joined Big Band Networks and where I was head of business  
13 development there.

14 I left Big Band Networks in 2004 to form a company  
15 called Switch Media, which was acquired by ICTV, which I  
16 became an employee.

17 Q. What was the business of Switch Media?

18 A. Switch Media was a media processing company.

19 Q. When you say media processing company, can you give us  
20 more of an example of what you mean?

21 A. Sure. We were bringing out new innovations in media  
22 processing, allowed us to manipulate video in the compressed  
23 domain.

24 Q. Where was this company located?

25 A. ActiveVideo or Switch Media?

1 Q. Switch Media.

2 A. Switch Media was in San Jose.

3 Q. All right. Now, when you joined ActiveVideo, you'd been  
4 in the business for about how long, 15 years?

5 A. 15, 20 years, yes.

6 Q. Okay. And you worked for how many startups?

7 A. Four, I believe. Three or four.

8 Q. Now, your title at ActiveVideo 2006 was what?

9 A. Senior vice-president of business development.

10 Q. And were you involved, when you arrived, with the Verizon  
11 relationship?

12 A. I became involved, yes.

13 Q. And tell us how that happened.

14 A. Um, we were -- well, I was personally contacted by people  
15 from Verizon, and I think it was Mr. Steven Whitehead. At  
16 the time it was in 2006, early 2006. He had got my name from  
17 somewhere.

18 Q. And who was Steven Whitehead?

19 A. I believe he is a director of technology out of their  
20 Waltham, Massachusetts office.

21 Q. And when did this contact take place?

22 A. Early 2006, I believe. Not long after I'd joined the  
23 company.

24 Q. And did you know Mr. Whitehead from a prior encounter?

25 A. No, I had not.

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1 Q. And what, if anything, was Mr. Whitehead interested in  
2 doing with ActiveVideo?

3 A. Mr. Whitehead wanted to understand better our technology  
4 and our product set.

5 Q. And did he tell you why?

6 A. To explore the use of the product in the Verizon video  
7 delivery system.

8 Q. Now, at the time you had contact with Mr. Whitehead, had  
9 anyone at ActiveVideo advised you that Verizon had lab  
10 equipment already on its premises?

11 A. Yes. After that --

12 MR. KING: Objection.

13 THE COURT: Hold on a second. What is the  
14 objection.

15 MR. KING: The objection is leading the witness.

16 THE COURT: I'm going to have to overrule that.

17 THE WITNESS: Repeat the question, please.

18 MR. JOHNSON: Can you read it back.

19 THE COURT: We don't do that.

20 MR. JOHNSON: Oh, we don't?

21 THE COURT: Your have to remember it or move on.

22 BY MR. JOHNSON:

23 Q. Had anyone advised you as of this early 2006 time frame  
24 that there had been equipment already loaned by ICTV to  
25 Verizon?

1 A. Yes. Yes. When I got there, I asked, you know -- I did  
2 an analysis on who we were currently working with, and it --  
3 you know, it was in reports in the company that -- and I was  
4 told by people working there, that we had been involved with  
5 Verizon and that we had shared with them certain lab  
6 equipment.

7 Q. And what was your reaction to the sharing of this lab  
8 equipment, if any?

9 A. Well, I was new to the company, and I assumed it was --  
10 we were continuing business as, you know, trying to explore  
11 doing business with Verizon, and assumed it was a good  
12 practice to do.

13 Q. Now, did you look into whether or not there was an NDA in  
14 place?

15 A. Yeah. I mean, as a standard practice of business, at  
16 least the way I like to practice, is that if product is to be  
17 shared, I would, you know, like to have a mutual  
18 nondisclosure agreement, an agreement that says I'm going to  
19 show you what we have, you're going to show us what they  
20 have, and we agreed not to tell anybody.

21 Q. Let me have you take a look at Exhibit 89.

22 A. Am I looking --

23 Q. Yeah. You should have a book there with an exhibit in  
24 it.

25 A. 89?



1 Q. Yes.

2 A. Yes, sir.

3 Q. Do you have it in front of you?

4 A. Yes, sir.

5 Q. Have you even this document before?

6 A. Yes, sir, I have.

7 Q. Can you tell us what it is?

8 A. It's a general presentation talking about the -- at the  
9 time ICTV product set, the company, the technology or IP.

10 Q. And what was this presentation used for in or about March  
11 2006?

12 A. To introduce our products and its capability to the  
13 Verizon people.

14 Q. And did you participate in the preparation of this  
15 document?

16 A. I oversaw it, yes.

17 Q. And did you make the presentation in or about March 2006  
18 to Verizon?

19 A. I do believe so, yes, sir.

20 MR. JOHNSON: At this time, Your Honor, we'd like to  
21 move Exhibit 89 into evidence.

22 THE COURT: Any objection?

23 MR. KING: No objection, Your Honor.

24 THE COURT: Then admitted.

25 MR. JOHNSON: May I publish it, Your Honor?

1 THE COURT: You may.

2 (The document was received in evidence and marked as  
3 Plaintiff's Exhibit No. 89.)

4 BY MR. JOHNSON:

5 Q. Okay. Were you the person giving this -- we live now?

6 A. Yes, sir.

7 Q. All right. Were you the person who gave this  
8 presentation in March 2006?

9 A. Yes, sir.

10 Q. And where did the presentation take place?

11 A. I believe this one was telephonically.

12 Q. Where?

13 A. We did it over the phone. We distributed the PowerPoint  
14 to them and then spoke to it over the phone, I believe.

15 Q. Now, do you recall the names of the individuals you were  
16 speaking with at Verizon?

17 A. I believe it was Steven Whitehead and his team. Um,  
18 Sue -- no, Jim Paschetto, I think is one of the names.

19 Q. Go to the second page.

20 A. Yes.

21 Q. There is a reference to 24 issued patents and 17 pending.  
22 Do you see that?

23 A. Yes, sir.

24 Q. And why did you include that as part of the presentation?

25 A. It's a standard app to take to underscore the work, the

1 innovation and the -- you know, the intellectual property  
2 that goes behind the products that we are selling. It shows  
3 the uniqueness of what we are doing.

4 Q. If you will, go over two slides to the ICTV approach.

5 A. Yes.

6 Q. And can you explain to the jury what this slide shows.

7 A. This is a high level overview of our products and how it  
8 fits within a network.

9 Q. And can you walk us through.

10 A. Walk through, yeah. So from left to right it -- we --  
11 what we are doing is we are showing that our platform at the  
12 time HeadendWare serves as a processing bridge, so to speak,  
13 between the programming community, which could include  
14 various types of programming, whether its video out server,  
15 linear video, advertising, games, personalized services, you  
16 know, transactional-type pieces and how they show up on the  
17 TV set.

18 And in the middle is our box that says HeadendWare,  
19 which is where it sits within the network operator, and on  
20 that network operator we insert our technology. We manage  
21 the process and we enable those types of activities.

22 Q. Now, on the right it shows an arrow broken down with key  
23 strokes and then an arrow back with MPEG2/MPEG4 & AC-3 MPEG  
24 audio. Do you see that?

25 A. Yes, sir.

1 Q. Can you explain that to the jury.

2 A. Yes. We -- the way our system works, and the way I  
3 explain it to our customers, is that we transmit the  
4 experience, the interactive experience, the video stream to  
5 the set-top box. So it looks like any ordinary stream as it  
6 hits the box. So we take all the processing requirements off  
7 the set-top box, bring it into the network itself.

8 Q. Now, on the next page is a reference to the ICTV active  
9 channels?

10 A. Yes.

11 Q. What are active channels?

12 A. It's a name, a marketing name that we gave applications  
13 that could be created on our platform.

14 Q. And what did these active channels do?

15 A. I mean, in a broad sense they could do pretty much  
16 anything you wanted them to do. But specifically, as we were  
17 marketing them, we could enable certain things, a  
18 personalized mosaic, which would be multiple video tiles on a  
19 screen and which you could select and navigate to go to other  
20 channels. We could enable what we call VOD navigation or  
21 Video On Demand navigation which would provide a richer  
22 experience in when you go to select an on-demand instruction  
23 like the cable operator may offer, it makes it easier to find  
24 things on your TV set.

25 We also support transactions such as with Home

1 Shopping Network, and we enable the integration of text and  
2 video, sort of like if you had CNN.com on the web, we would  
3 replicate that on TV in a very easy to use, remote control  
4 managed process. So those are some of the prime examples.

5 BY MR. JOHNSON:

6 Q. Now, on the next line it shows the content server. Can  
7 you explain that to us.

8 A. Yeah. Roughly it's a high level to say that, you know,  
9 our technology, our platform enables from various content  
10 servers the distribution of experiences such that on the  
11 left-hand side you see what you would see on the web on your  
12 PC.

13 Then on the right-hand side it shows how we would  
14 translate that using our technology to appear on your TV,  
15 sort of like I just explained with CNN.com. On the left, if  
16 you imagine that was CNN.com, we would replicate that  
17 experience on the TV set, but instead of using a keyboard and  
18 a mouse, you would use your remote control.

19 Q. Okay. Anyway, how long did this presentation take?

20 A. You know, it really depends. I don't remember the  
21 specific -- that specific day, but when I gave these type of  
22 presentations, it could go 45 minutes, it could go two hours.  
23 It just depends on the depth of the question the particular  
24 customer might have.

25 Q. Let's go to Exhibit 23.

1 A. On the book?

2 Q. Yes. You should be able to flip right to it.

3 A. Okay. Looking.

4 Q. All right. Let's go through it. Did you receive a copy  
5 of this exhibit on or about December 15, 2006?

6 A. It seems to be a stream of e-mails, yes.

7 Q. And did you receive it in the regular course of your  
8 business?

9 A. Yes, I did.

10 Q. And does it appear to be accurate, to the best of your  
11 knowledge?

12 A. As far as I can recall, yes.

13 MR. JOHNSON: Your Honor, I move PX 23 into  
14 evidence.

15 THE COURT: Any objection?

16 MR. KING: No objection, Your Honor.

17 THE COURT: Exhibit 23 will be admitted.

18 (The document was received in evidence and marked as  
19 Plaintiff's Exhibit No. 23.)

20 BY MR. JOHNSON:

21 Q. Now, you had a conference call on or about December 15,  
22 thereabouts?

23 A. Yes.

24 Q. And do you know who Walter is?

25 A. I believe this is referring to Walter Delph.

1 Q. And Maitrey?

2 A. Maitrey. I would -- I fail to be able to pronounce her  
3 last name. I apologize.

4 Q. Now, they indicated they planned to visit you in San  
5 Francisco?

6 A. We had discussed that possibility, yes.

7 Q. And there is a reference to item number four. Do you see  
8 that?

9 A. Yes.

10 Q. And can you tell the jury what that is all about?

11 A. Well, as you recall earlier in the testimony, I became  
12 aware of a couple of lab systems that ICTV had provided to  
13 Verizon prior to my coming on board, and as of this e-mail  
14 date, we still had not, to my knowledge, received them back.  
15 And they had expressed that to us, at least this group in  
16 Waltham, Massachusetts, had expressed to us that they didn't  
17 know where the systems were and that, you know -- they didn't  
18 know of their whereabouts.

19 Q. Now, did one of the systems subsequently get returned in  
20 or about December 2006?

21 A. Yes, in that time frame, yes.

22 Q. Did you see the system?

23 A. Yes, I did.

24 Q. And what, if any, reaction did you have when you saw that  
25 system?

1 A. Um, you know, I was both surprised and very disappointed,  
2 to be honest with you.

3 Q. Why were you surprised?

4 A. I was surprised that a large public company would treat  
5 someone else's property in such a manner.

6 Q. And so you were disappointed?

7 A. Well, yeah. I mean, I want to do business with  
8 companies, and it's sort of throws up my paranoia flag when I  
9 see stuff like that happening.

10 Q. You say -- did it flow up your paranoia flag?

11 A. Absolutely.

12 Q. And when you say it flew up your paranoia flag, tell us  
13 what you mean.

14 A. Well, I mean, the -- when I saw the system -- I mean, my  
15 understanding is when we send a system out, we send the  
16 system prewrapped, which means it's sitting in a rack that's  
17 bolted together, and we take care to pack it very carefully  
18 in a wooden crate. It's all wired and it's ready to go so  
19 that when it arrives at the destination, we roll it out of  
20 the rack, we plug it in, we turn it on, it should work.

21 And when I looked -- went downstairs to look at this  
22 system as it was returned, it was -- all the machines had  
23 been taken out of the rack, looks like they had been tossed  
24 into the box, randomly.

25 THE COURT: Wait a minute. Objection.



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1 MR. KING: Objection, Your Honor, can I approach the  
2 bench?

3 (Side-bar conference.)

4 MR. KING: I was concerned about this item the  
5 witness was going to testify, she was going to report that  
6 she got the picture, and you let it in. Now, he's testifying  
7 that he was disappointed that Verizon --

8 MR. JOHNSON: Testifying that he went downstairs and  
9 saw the rack.

10 THE COURT: I'm going to sustain the objection. No  
11 argument about it. It's not all that relevant. Testimony  
12 always come in that we came back. They should have the  
13 picture there showing it in disarray and they didn't need to  
14 grind into this. So let's just move right on. Sustained.

15 MR. KING: Thank you, Your Honor.

16 (End of side-bar conference.)

17 BY MR. JOHNSON:

18 Q. Now, after the rack came back, did you have discussions  
19 with Verizon about mutual nondisclosure agreements?

20 A. Oh, yes, I did have several conversations with them.

21 Q. And what was the reason you had these conversations?

22 A. Um, well, they were requesting that we provide them with  
23 another lab system and more of our technology, and I was  
24 hesitant to do so without a nondisclosure, a mutual  
25 nondisclosure.

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1 Q. Did you communicate that to Verizon?

2 A. Yes, I did.

3 Q. And who did you communicate it to?

4 A. I -- the people that we were dealing with, there was  
5 Brent Simon, there was Steven Whitehead, there was Walter  
6 Delph, there was Jim Paschetto, pretty much Susan Twomey, I  
7 think her name was, everyone I talked to.

8 Q. Now, if you will, let's look at Exhibit 91.

9 A. Yes, sir.

10 Q. Have you seen this document before?

11 A. Yes, sir.

12 Q. And did you prepare it on or about March 31, 2008?

13 A. This is -- Yes, I did.

14 Q. And was it done in the regular course of your business?

15 A. Yes, I did.

16 Q. And as you sit here today, does it appear to be accurate,  
17 to the best of your knowledge?

18 A. To the best of my knowledge, yes.

19 MR. JOHNSON: Move Exhibit 91 into evidence, Your  
20 Honor.

21 MR. KING: No objection, Your Honor.

22 THE COURT: Be admitted.

23 (The document was received in evidence and marked as  
24 Plaintiff's Exhibit No. 91.)

25 BY MR. JOHNSON:

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1 Q. All right. What caused you to write this?

2 MR. JOHNSON: Pardon. Oh, Your Honor, I misspoke.  
3 This is March 31, 2006. I said 2008.

4 THE WITNESS: Sorry, yes. I read it as 2006.

5 BY MR. JOHNSON:

6 Q. Okay. What caused you to write this document?

7 A. Um, I mean, the initial was -- actually, this doesn't  
8 have my members are on there. Oh, yeah. The initial is just  
9 standard practice. I'm asking for a mutual nondisclosure,  
10 and, you know, they responded that -- well, they responded --  
11 they asked me to remove a confidentiality legend that we had  
12 on the presentation, and I responded back, they being  
13 Verizon, and I responded back saying that --

14 THE COURT: Hold on. Do you have an objection?

15 MR. KING: He is testifying as to what Verizon says,  
16 Your Honor.

17 THE WITNESS: No, right here.

18 THE COURT: Well, don't say anything. He is getting  
19 too far afield.

20 MR. JOHNSON: He is expressing what's contained in  
21 the e-mails, communication with Verizon.

22 THE COURT: Overruled. He is back to the e-mail. I  
23 think we are about where we are sitting all along. I think  
24 it might be helpful if we know who this e-mail is between  
25 here and what communication was and we stick to the e-mails,

1 and I think that won't present a problem.

2 BY MR. JOHNSON:

3 Q. Let's go to the top of the -- and identify the  
4 individuals. Who is Norman Brent?

5 A. Norman is a person I'd never met personally, but my  
6 understanding is that he works in either the legal group at  
7 Verizon or it says Verizon strategic sourcing. I'm not sure  
8 what group that is.

9 Q. Angel Cordero?

10 A. Not sure.

11 Q. Brent Simon?

12 A. Brent Simon was my contact, one of my contacts in the  
13 product management group.

14 Q. And Christina Fyock?

15 A. I believe Christina, if I remember correctly, worked in  
16 the Waltham, Massachusetts technology group.

17 Q. For Verizon?

18 A. Yes. Sorry. Yes.

19 Q. Well, see if we can make this easy. Is everyone  
20 mentioned in the block a Verizon employee?

21 THE COURT: To you knowledge?

22 THE WITNESS: Let me just cruise through this.

23 Everyone, yeah. I do know that Stella Alvo was a contractor  
24 at the time, I believe, not an employee.

25 THE COURT: For sake of brevity here, Mr. Johnson, I

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1 think he's addressed who you are dealing with and the Court  
2 believes that we can save time and not going through  
3 everybody in this e-mail address unless it has some  
4 relevance.

5 BY MR. JOHNSON:

6 Q. All right. Now, was this the result of a meeting that  
7 you told us about earlier, this e-mail?

8 A. This e-mail was a result that they wanted me to remove a  
9 legend from the slide deck that had confidentiality stamped  
10 on it, on the information.

11 Q. And do we see that? We go over to the second page,  
12 second e-mail from Norm Bryant?

13 A. Yes.

14 Q. Says Michael?

15 A. Yes.

16 Q. The slides you have submitted bear a legend that  
17 indicates the information therein is proprietary and  
18 confidential. Please either remove the legend and resend or  
19 remove the confidential and/or proprietary information from  
20 the presentation and resend. Thanks in advance for your  
21 cooperation." Do you see that?

22 A. Yes, sir.

23 Q. Were these the slide decks that I showed you earlier that  
24 we are talking about here?

25 A. I believe it is, yes, sir.

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1 Q. Okay. And your response is found on the previous page?

2 A. Yes, sir.

3 Q. Norm - the thing is, these are confidential slides and  
4 fall under our existing NDA with Verizon. Additionally, as I  
5 indicated at several junctures during the meeting, and which  
6 I will reiterate now, the information which I provided to you  
7 is also to be considered confidential."

8 A. Yes, sir.

9 Q. What, if anything, did Verizon say when you told them it  
10 was confidential and you wanted it on the legend?

11 A. I'm sorry. Repeat the question.

12 Q. What, if anything, did Norman say to you when you refused  
13 to remove the legend?

14 MR. KING: Objection, Your Honor, calls for hearsay.

15 THE COURT: Well, we will sustain it in the past,  
16 but I think if you have something here, Mr. Johnson, that is  
17 responsive to the question, have anything to do with the go  
18 to. Do you have e-mails address in which you are concerning  
19 now?

20 MR. JOHNSON: No. I'm asking him now for his  
21 reaction to a communication we had with a party to this  
22 action.

23 THE COURT: Without saying what he said, you can get  
24 a response in of what, if anything, did he do as a result of  
25 your request. Let's move on.

1 THE WITNESS: Yes, sir. He reiterated his position,  
2 I reiterated my position, and he was not on the business  
3 side. He was from the sourcing/legal group side.

4 THE COURT: Not what he said, just what you did.

5 THE WITNESS: Well, and as a result I took that to  
6 heart and, you know, because I still wanted to do business  
7 with Verizon, I tried to figure out how to get around not  
8 giving them confidential information but still convincing  
9 them that we had good product, good technology.

10 BY MR. JOHNSON:

11 Q. And what did you do?

12 A. We provided, you know, verbal presentation. We would  
13 modify it such that it wasn't, you know -- sometimes our  
14 precise, you know, technology, technical information. I'm a  
15 sales guy, and I'm trying to figure out how to sell these  
16 guys, and I have ten customers I can sell to, I go after  
17 them. It is what I do.

18 Q. Let's take a look at Exhibit 291.

19 A. Yes, sir.

20 Q. All right. Have you seen this document before?

21 A. Yes, sir.

22 Q. Can you tell us what this document shows? I'm sorry. I  
23 have the wrong number. I don't need you to tell me about  
24 that document.

25 A. Okay.

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1 Q. In your employment with the company, did you receive  
2 another system from Verizon in December 2007?

3 A. You mean the second system, that we received that back?

4 Q. Yes. Right.

5 A. December 2007, is that when you said?

6 Q. Correct.

7 A. Yeah, it was around that time frame. It was December  
8 2007 or January 2008. It was in that holiday period.

9 Q. All right. And did there come a point in time in 2008  
10 when you made the decision concerning your relationship with  
11 Verizon?

12 A. Yeah. I mean, I -- as a sales guy, you know, we, under  
13 the normal course of business, we have to -- we have so many  
14 resources because we are, you know, we are a small company.  
15 And there are, you know -- to engage with an operator of this  
16 size requires a certain amount of resources, and it's  
17 expensive to engage with such an operator.

18 And we -- you know, at the executive level, we made  
19 certain decisions on, you know, in 2008, which was beginning  
20 of the year, beginning of our year, physical year, to focus  
21 on certain companies and to defocus others. And we take a  
22 number of things into consideration, and risk is a big  
23 consideration that we have to take into play. And we looked  
24 at the risk of continuing to engage with Verizon versus our  
25 upside vis-à-vis the other operators we were working with.



1 MR. KING: This is the same inflection that has been  
2 going on, continued objection.

3 MR. JOHNSON: What infection?

4 THE COURT: Don't respond. Objection overruled.  
5 Don't give us a narrative, Mr. Johnson. The witness will  
6 answer. I don't want any narrative, just keep going on and  
7 on and on. You ask a question and then answer, and then you  
8 ask another question if he wants to know something.

9 THE WITNESS: Yes, sir.

10 BY MR. JOHNSON:

11 Q. Did you reach a decision about continuing to work with  
12 Verizon?

13 A. We decided to wind down.

14 Q. And what was the reason?

15 A. I thought that the risks were higher than the rewards,  
16 the risk being I didn't trust them that much.

17 MR. JOHNSON: Nothing further.

18 THE COURT: You can start it. Cross-examination.

19 CROSS-EXAMINATION

20 BY MR. KING:

21 Q. Good evening, Mr. Taylor.

22 A. How you doing?

23 Q. We've met before, haven't we?

24 A. Yes, sir.

25 Q. Nice to see you again.

1 A. And you, too.

2 Q. Let me start by asking you a few questions about some of  
3 the documents that you've been talking about with your  
4 counsel.

5 A. Sure.

6 Q. If we could see Plaintiff's Exhibit 91, please.

7 A. Is it going to come up on the screen? Oh, great, thank  
8 you.

9 Q. Let's go to the second page, please. And highlight that  
10 top paragraph there. You testified about your reaction to  
11 this e-mail, correct?

12 A. Yes, sir.

13 Q. So let me see if I understand. You sent slides to  
14 Verizon that were marked confidential, correct?

15 A. Yes, sir.

16 Q. And Verizon said either take off the confidential  
17 designation or take out the confidential material and send it  
18 back?

19 MR. JOHNSON: Objection. That is hearsay, and it  
20 lacks foundation.

21 THE COURT: Well, I'm going to sustain the objection  
22 for another reason. I need you to rephrase the question to  
23 comport with exactly what was said on direct about that.

24 BY MR. KING:

25 Q. Well, let's look exactly at what Verizon said. They

1 said, "The slides you have submitted bear a legend that  
2 indicates the information therein is proprietary and  
3 conversational. Please either remove the legend and resend  
4 or remove the confidential and/or proprietary information  
5 from the presentation and resend." That is what it says,  
6 right?

7 A. Yes, sir.

8 Q. And you responded by removing the confidential material  
9 and resending the slides to Verizon, correct?

10 A. I specifically did not, no.

11 Q. You testified that some of the technical stuff was taken  
12 out of the presentation and was resent to Verizon, correct?

13 A. It has been, yes. I don't know if it was that specific  
14 one, but, yes, as a course of business, that is what we do.

15 Q. So Verizon -- well, okay. So let's talk a little bit  
16 about the presentation that was at issue here. Let's look at  
17 Plaintiff's Exhibit 89, please. So this slide deck is a  
18 presentation you gave to Verizon, correct?

19 A. Yes. Yes, sir.

20 Q. And it is similar to many slide decks you've given the  
21 other customers over the years, right?

22 A. With nondisclosure, yes.

23 Q. Okay. And, well, before we move on, let's talk for a  
24 moment about the second slide, I think. Yeah, this one here.

25 A. Yes, sir.

1 Q. You talk about -- we mentioned the third bullet point  
2 there.

3 A. Uh-huh. Yes, sir.

4 Q. It says that 24 issued and 17 pending patents?

5 A. Yes, sir.

6 Q. Is this a type of slide you would show potential  
7 customers in presentations?

8 A. Yes, it is.

9 Q. And whether or not there was an NDA, you would show this  
10 type of slide to potential customers, right?

11 A. This particular slide, yes.

12 Q. Okay. And during the presentations, did you ever discuss  
13 with potential customers specific patents?

14 A. It's really not my bailiwick.

15 Q. So the answer is no?

16 A. Right.

17 Q. And during the presentation with Verizon did you discuss  
18 any of the specific patents?

19 A. In detail, no.

20 Q. Even generally?

21 A. I stated that we haven't.

22 Q. And did you discuss any of those specific claims in those  
23 patents?

24 A. With Verizon, no, I did not.

25 Q. Did you discuss how the patents might potentially read on

1 Verizon products?

2 A. No, I did not.

3 Q. If you'd turn to -- the pages aren't marked so you're  
4 just going to have to scroll through. I'll tell you when to  
5 stop. There is no number on any of these. Apologize about  
6 this. Keep going. Getting closer. Okay. Here it is.  
7 Actually the next slide, please. So this is a slide you  
8 discussed with Verizon, as well?

9 A. It was a course of business. Usually I would not discuss  
10 this specific slide. I would have someone technical there  
11 with me.

12 Q. But the person who was there with you would discuss this  
13 slide with Verizon?

14 A. Yes.

15 Q. And you discussed STD integration and certification, you  
16 see that?

17 A. Yes, I do.

18 Q. And did you discuss with Verizon that one of the STB  
19 integrations that ActiveVideo was engaged in was TV Guide?

20 A. Well, as a third party.

21 MR. JOHNSON: Your Honor, beyond the scope and --

22 THE COURT: Objection overruled.

23 BY MR. KING:

24 Q. Can we go to the next page, please. And did you discuss  
25 with them, under cable infrastructure compatibility, the

1 third bullet point, there the TV Guide Iguide. Do you recall  
2 discussing that with Verizon?

3 A. Yes, we discussed this with the clients that intend to  
4 integrate with, yes.

5 Q. And TV Guide was a client you integrated with?

6 A. Yes.

7 Q. I have a few questions about the rack that Verizon  
8 returned to you.

9 A. Okay.

10 Q. You said the rack was in disarray when you received it?

11 A. Yes.

12 Q. Do you know who at Verizon packed the rack before it was  
13 sent back to you?

14 A. The specific individual? No, I do not.

15 Q. Do you know what kind of condition the rack was in when  
16 Verizon put it in the box?

17 A. No, I do not.

18 Q. Do you know the shipping company that shipped the rack  
19 from New Jersey to California?

20 A. I do not.

21 Q. Do you know what kind of shipping was used? Was it sent  
22 back truck, by train, by plane, by boat?

23 A. It was --

24 MR. JOHNSON: COURT: Objection, compound.

25 THE COURT: Objection overruled.

1 THE WITNESS: It was in a crate.

2 BY MR. KING:

3 Q. But you don't know how it was shipped?

4 A. I don't know. I mean, I assume it came to our office in  
5 a truck. How it got from Verizon to that truck, I don't  
6 know.

7 Q. Do you know how the shipping company handled the box on  
8 the way across the country?

9 A. Seems to me -- well, I know that if it were bolted into  
10 the rack, you would have to throw it off a cliff to have the  
11 components fall into the disarray that it was in.

12 Q. Unless one of the screws had come loose that had bolted  
13 in the rack, one of the bolts had come loose?

14 A. A number of screws would have to come loose, and if that  
15 were the case then someone at Verizon would have had to  
16 loosen them or taken the rack off, because when we delivered  
17 it, it was tightened. It was delivered in one piece.

18 Q. But you don't know the condition of the rack when it went  
19 in the box, do you?

20 A. I was not present.

21 Q. You don't know if some of the bolts had cracked or loose?

22 A. No -- if it had, it would be a first.

23 Q. Okay. The question is do you know whether there were any  
24 bolts that were cracked or loose when it went in the box?

25 A. No, sir, I do not know the condition of those bolts.

1 Q. Okay. And when you received the box, did you check to  
2 see whether the bolts were cracked?

3 A. Did I personally?

4 Q. Did you personally?

5 A. No, sir, I did not do that.

6 Q. Did you ask anyone to do that?

7 A. No, sir, I did not ask someone to check the condition of  
8 the bolts.

9 Q. Were you concerned about the condition of the components  
10 in the box?

11 A. I was -- yes. I was more concerned about the components  
12 than I were about the bolts.

13 Q. And did you ask anyone at Verizon to do a forensic  
14 investigation to determine whether or not the components had  
15 been tampered with in any way?

16 A. A forensic investigation?

17 Q. Any sort of --

18 A. You mean like CSI?

19 Q. That the box had been tampered with?

20 THE COURT: All right. We have gone on enough.

21 Let's move on to another question. As a matter of fact, we  
22 are going to terminate right here. We are going to take up a  
23 new subject on tomorrow morning.

24 Ladies and gentlemen, as I indicated, you have to  
25 move a little earlier tomorrow morning so hopefully we can



1 get out of here earlier. We are going to start at 9, and as  
2 I indicated we are going to quit around 2 or 2:15. So you  
3 get breakfast so you can last. We want to get out of here.  
4 Remember the Court's precautions, and we'll see you in the  
5 morning. All rise.

6 (Jury out at 5:27 p.m.)

7 THE COURT: You can step down, Mr. Taylor.  
8 Remember, you are still doing this overnight. You are still  
9 on cross-examination.

10 THE WITNESS: Yes, sir.

11 THE COURT: All right. Have a seat, everybody, for  
12 one second. We had a side-bar up here because, Mr. King, you  
13 didn't want Mr. Johnson to get all into the condition of the  
14 box and how it happened, et cetera, because you said it was  
15 prejudicial under Rule 403.

16 The Court sustained your objection, made Mr. Johnson  
17 move on. You immediately got up on cross-examination and  
18 jumped into the middle of the very thing you asked the Court  
19 to stop Mr. Johnson from doing. You got all into the details  
20 of that.

21 Well, that is all I have to say is, gentlemen, pay  
22 close attention to what you are doing here. Don't shoot  
23 yourself in the foot. That is all I say to both of you.

24 The Court will see you in the morning.

25 MR. JOHNSON: Your Honor, may I, before we leave,

1 you've asked us to get along, and I certainly --

2 THE COURT: You will get along.

3 MR. JOHNSON: I understand, Your Honor. But here is  
4 the will get along part. We are going to put up our  
5 technical expert, and we were hoping to avoid having to play  
6 lots and lots of video to establish the existing documents  
7 that were in Verizon's custody and control.

8 And the normal way -- well, there was normal but  
9 typically the parties simply stipulate to the underlying  
10 documents.

11 THE COURT: Mr. Gutman, if you will have a seat  
12 until he finishes and then I will call you back up.

13 MR. GUTMAN: Thank you, Your Honor.

14 MR. JOHNSON: So if we can avoid having to play  
15 hours and hours. Well, for whatever reason, we are  
16 continuing to get hearsay objections, objections about  
17 third-party documents that they produced to us like from  
18 SeaChange.

19 So I don't want to play an hour and a half of  
20 SeaChange video to have them describe or so that my expert  
21 can base his opinion on some of those statements, Your Honor,  
22 but I will be forced to. So I would request the Court,  
23 unless there's -- to suggest to the other side that we try to  
24 eliminate a lot of this, we can do this by stipulation. It  
25 can be admitted. He can testify to it, or we can spend all

1 morning.

2 THE COURT: Anything you want to say? The Court  
3 will respond.

4 MR. GUTMAN: Your Honor, we have made a whole number  
5 of proposals from mutually eliminating these issues or  
6 reducing them to the ones that really matter, and I think  
7 Your Honor's seen the difficulties we have had with exhibits.  
8 We have a contract. They were objecting to the contract as  
9 hearsay. We are happy to work out something mutual but we  
10 are not prepared to -- I mean, I don't think we should be  
11 expected unilaterally to give it up.

12 And we have tried, Judge. We have made a number of  
13 proposals and the answer has been no.

14 THE COURT: Thank you. You gentlemen sound like you  
15 all are in Congress negotiating on the debt.

16 MR. GUTMAN: As I was saying it sounded a lot like  
17 that. I would be happy to try and work -- if he's got  
18 specifics, I'd be happy to try and work --

19 THE COURT: I have a seat, please. Look, in terms  
20 of too many objections, the Court doesn't believe we have had  
21 an unusual number of objections. I think some of the  
22 objections were well-founded, you know, regarding hearsay on  
23 both sides. So I don't think you had an unusual number of  
24 objections. That is not the Court's perception. So I'm  
25 going to approach it. Some were made, the Court overruled.

1 But what it boils down to is you can work out an  
2 agreement to make life work better for both of you. You are  
3 not getting any advantage. You are just going to eat up you  
4 time for both of you. You got 30 hours. Eat it up. It is  
5 not going to enure to the benefit of either party. So your  
6 best bet is to sit down and figure out a way to deal with the  
7 problem.

8 Now, I know that is not resolved in telling you to  
9 go deal with it, because what is going to happen is very  
10 simple, that if you keep on, I may very well reduce the 30  
11 hours. I get the perception that you are wasting the Court's  
12 time on frivolous objections over things you ought to agree  
13 on as professionals, the Court will reduce your 30 hours, *sui*  
14 *sponte*, and that's the way I'm going to leave it.

15 You've been in this case long enough so you know  
16 which documents really matter and what it is really going to  
17 come down to when your experts testify. So stop jerking each  
18 other around on things that really don't matter. So I'm just  
19 telling you. I'll leave it to you be that is what the Court  
20 will do.

21 You want to squabble, we can cut it back to 20 hours  
22 and see how many documents you can get in and what you can  
23 achieve. That is not a threat. That is a promise. The  
24 Court will be in recess till tomorrow morning at 9:00.

25 MR. GUTMAN: I have one more thing before we recess.

1 Could we reserve Mrs. Regis for recall in our case. Again,  
2 she's on some of those documents.

3 THE COURT: All right. Mrs. Regis, where is she?  
4 Mr. Johnson, make sure Ms. Regis --

5 MR. JOHNSON: We will make her available when we are  
6 asked to.

7 MR. GUTMAN: She doesn't have to stay.

8 THE COURT: As long as she is available upon  
9 request.

10 MR. GUTMAN: Exactly, Your Honor. That is all we  
11 need.

12 (Hearing adjourned at 5:33 p.m.)

13 CERTIFICATION

14  
15 I certify that the foregoing is a correct transcript  
16 from the record of proceedings in the above-entitled matter.

17  
18  
19 X \_\_\_\_\_/s/\_\_\_\_\_x

20 Jody A. Stewart

21 X \_\_\_\_\_7/14/2011\_\_\_\_\_x

22 Date  
23  
24  
25